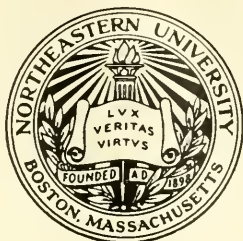




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IMPROVING LEGAL REPRESENTATION FOR OLDER AMERICANS

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JOINT HEARING
BEFORE THE
SPECIAL COMMITTEE ON AGING
AND THE
SUBCOMMITTEE ON
REPRESENTATION OF CITIZEN INTERESTS
OF THE
COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE
NINETY-THIRD CONGRESS
SECOND SESSION

LOS ANGELES, CALIF.

JUNE 14, 1974



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¹ Appointed January 25, 1974, to fill vacancy on committee by resignation of William B. Saxbe (R., Ohio) from the Senate, January 3, 1974.

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IMPROVING LEGAL REPRESENTATION FOR OLDER AMERICANS

FRIDAY, JUNE 14, 1974

U.S. SENATE,
SPECIAL COMMITTEE ON AGING AND
SUBCOMMITTEE ON REPRESENTATION OF CITIZEN
INTERESTS OF THE JUDICIARY COMMITTEE.

Los Angeles, Calif.

The committee and subcommittee met, pursuant to call, at 9:15 a.m., in room 1138, State Building, Senator John V. Tunney of California presiding.

Present: Senator John V. Tunney.

Also present: David A. Affeldt, chief counsel; John A. Edie, professional staff member; John Guy Miller, minority staff director; Robert M. M. Seto, minority counsel; Yvonne McCoy, assistant chief clerk, Special Committee on Aging; and Jane Lake Frank, chief counsel, Judiciary Subcommittee on Representation of Citizen Interests.

OPENING STATEMENT BY SENATOR JOHN V. TUNNEY, CHAIRMAN

Senator TUNNEY. This joint hearing of the Senate Special Committee on Aging and the Judiciary Subcommittee on Representation of Citizen Interests takes place amid mounting evidence that the legal and other needs of older Americans have, to a large extent, been overlooked and ignored.

Every day approximately 4,000 Americans turn 65. Almost 10 percent of our population, and 2 million Californians, are 65 or older. Many of these people are able to lead productive lives. Many others are burdened with health problems, small retirement incomes against which expenditures for food and shelter are disproportionately large, and the enormous red tape involved in securing needed Federal benefits, Social Security, food stamps, veterans' pensions, Medicare, Supplemental Security Income, to which they are now entitled and which are the economic mainstay of a vast majority of older Americans. Social Security, for which more than 90 percent of the elderly are eligible, accounts for more than 50 percent of the total income of two-thirds of all single beneficiaries and one-half of all couples.

Too often our elderly are deprived of their rights because no one is available to explain the technical language of Federal regulations, or the requirements for witnessing a will, or the qualifications to be met in a pension plan, or the tax implications of retirement programs. Many of these "legal" problems require lawyers' help, but

others require only that competent paralegal or nonlegal advice be available. But even nonlegal help is often times inaccessible to our elderly, some of whom are physically unable to leave their homes; without transportation; without information about where to find help when help is needed; without economic resources; and often, without sufficient knowledge of the English language. Moreover, the typical older American has had very little contact with Government agencies during his preretirement years, except, of course, to pay taxes or to perform his military obligation.

This hearing, and subsequent hearings to be held in Washington, D.C., will combine the expertise of two Senate committees to explore the issue of improving legal representation for senior citizens. This issue was the subject of study by Senator Church's Special Committee on Aging, which has tirelessly explored a whole gamut of issues affecting senior citizens, including: what further procedural safeguards are needed for involuntary commitment proceedings; how law schools can better prepare young attorneys to have a more thorough understanding about some of the special legal problems affecting the older client; how lay advocates can be used more effectively on behalf of older Americans; and other ways to make government more responsive in its dealings with older Americans.

The more general issue of citizen access to representation has been the chief inquiry since May 1973 of the recently created Judiciary Subcommittee on Representation of Citizen Interests, which has held hearings on legal fees, the role of the organized bar in the delivery of legal services, consumer redress, and recent developments in prepaid legal plans.

We have selected California for the site of this first joint hearing because of its leadership in responding to the special needs of the elderly.

Right here in Los Angeles, for example, is the National Senior Citizens Law Center, the research arm for the 265 legal services programs when their aged clients have a problem. Another vital function of the National Senior Citizens Law Center is to sensitize the private bar, law schools, and legal services attorneys about the needs of the elderly. Its director, Paul Nathanson, will have more to say about that later this morning.

LEGAL SERVICES PROGRAM FOR THE ELDERLY

California now has the only legal services program designed exclusively for the aged which is funded by revenue sharing, the Legal Center for the Elderly, in Sacramento. We shall hear from its director.

An enterprising young lawyer and some Stanford Law School students have established a counseling center for senior citizens in Palo Alto as part of a senior citizens program there. That program will be discussed today.

Some members of the private bar have given generously of their time to counsel senior citizens, and one witness today will explain his work in this regard.

Lay advocates and paralegal aides are also trying to help, and we shall hear of their work this morning.

So are the national senior citizens' organizations, city and other officials.

But we have a long way to go. There is too little sensitivity to the severe problems which senior citizens face in securing the legal rights to which they are entitled as a matter of law.

There is too little understanding by senior citizens of the fact that they need help, or where to find it, and there is widespread fear that they will be unable to pay for it.

There has been too little creative thought by the private bar, by State and Federal agencies, and by the Congress about how to provide incentives for needed representation for older Americans.

In the Congress we do our best when constituents write about their problems. Considerable time is spent on "case work" to find answers or to cut through the tangles of red tape.

Yet it is also painfully clear that we are able to help only a tiny fraction. What about the others who suffer needless anxiety and injustice simply because they do not know what help is available or because they are victims of erroneous decisions?

I suspect that today's hearings will focus more on problems than answers. But in order to enact truly effective programs, we must fully understand and recognize the extent of the problem.

The search for answers must occupy all of us far more than it has, and it is my hope that many important answers will follow from the record we make in today's hearing.

Let me conclude with the remarkably perceptive words of a young student who wrote these thoughts on aging:

We are young Americans, the only kind of American to be. We eat well, have straight backs and have grown taller than our parents. Our whole society dotes on us; we are youth and health. The world is at our feet—for a few more years. It's painful for us to look beyond those few years.

Legal representation is one of a number of serious obstacles that face senior citizens. The most fundamental problem, of course, is the way we casually discard those who have passed their most productive years.

By affording adequate help to assure that senior citizens secure benefits and rights to which they are entitled, we go a long way toward recognizing a very fundamental and important truth: that there is, indeed, value in each and every human being in this Nation.

We will distribute a blue form to the audience which is, in effect, a letter to me. It says:

"Dear Senator Tunney:

"If there had been time for everyone to speak at the hearings on 'Improving Legal Representation for Older Americans' in Los Angeles, Calif., on June 14, 1974, I would have said:"

Those of you who choose, may write your remarks on this issue on the form, which will then be included in the hearing record. Please be sure to print your name and your address and your ZIP code clearly. When the hearing is printed, we will send you a copy of that record so you will not only be able to see what others said, but you will also be able to see your own statement. If you know someone whom you feel is particularly informed and articulate on the subject of the problems of improving legal representation of older Americans, we would welcome their comments as well.

Our first witness is Emma McFarlin, special assistant to Mayor Bradley, and Samuel Kolb, chairman of the Los Angeles Council on Aging, will appear with Mrs. McFarlin.

Please go ahead.

STATEMENT OF EMMA McFARLIN, SPECIAL ASSISTANT TO MAYOR BRADLEY

Mrs. McFARLIN. Thank you, Senator Tunney, and members of the committee.

Mayor Bradley asked me to thank you for your invitation to appear here today. Unfortunately, due to prior commitments, the mayor is not able to attend this hearing, but I will attempt to explain what the mayor's office has been doing in the area of senior citizen affairs and what we hope to be able to do in the future with his leadership.

First of all, let me give you some facts and figures to illustrate the size and scope of Los Angeles' elderly population. Within the city of Los Angeles more than 400,000 persons over the age of 60 reside. Within the boundaries of the county of Los Angeles almost 1 million elderly persons live. Latest available figures indicate that about 20 percent of the people over the age of 60 in both the city and county live at or below levels of poverty.

At this time I would like to indicate that the figure of 20 percent is one that we question, because we think there are more living at or below the levels of poverty.

Because of our pleasant climate, this area has attracted a larger proportion of elderly residents than other major cities in the country. The ethnic makeup of the older population is rich and varied, including large blocks of whites, blacks, Spanish-speaking, Indians and Asians.

The unique vastness of the city immobilizes many of the elderly. They find it extremely difficult to get to stores, to get to doctors' offices and to visit friends and families. Many times they live out their remaining years in gray ghettos, in isolation.

Many of these people are in lower income brackets and are dependent upon public agencies for subsistence or satisfaction of their basic needs. In addition, it would appear that senior citizens share common problems such as lack of transportation, vulnerability to criminal activity, lack of opportunity to socialize with peers or individuals in younger and older age groups; poor nutritional habits, and decreasing levels of physical well-being.

From the point of view of the city, it is the fragmentation and lack of access to services rather than the delivery of services that is causing confusion and lapse of services among senior citizens. The result of this modus operandi is that conflicting or overlapping functions are performed by agencies which operate independently of each other. This state of affairs has shown us the need to coordinate the services of existing organizations, and to study the need for establishing a new organization specifically charged with the responsibility of coordination and the maintenance of an information exchange mechanism.

According to a report entitled "Aging in California," published by the Institute for Local Self Government in 1971, the organization best suited to these tasks would be the one described as follows, and I read:

... every community should establish the type of organizational structure that can best operate the programs, deliver the services and meet the needs of our aging. The organization that can best perform these functions is one created at the local level, committed to its local purposes, aware of local problems, responsive to local needs, and aware of local resources. Such an organization is best equipped to inspire the necessary community conviction that the cause is right and that needs exist that must be served. It is also generally the most effective in securing local government participation and local financial support.

The city of Los Angeles agrees with this approach and is endeavoring to be that structure that will incorporate these characteristics while fulfilling the aspirations of senior citizens.

The present city administration is committed to developing goals, plans and projects that will enable all citizens to make their senior years safe, stimulating and satisfying. The mayor's office intends to accomplish this, in concert with the city council, with the participation of older citizens at each step of the way.

LOS ANGELES COUNCIL ON AGING

During Tom Bradley's campaign for mayor he pledged to give the elderly a voice in the development of programs and goals for the city to meet the needs of senior citizens. He has fulfilled this promise through the creation of the Los Angeles Council on Aging. The council is made up of 150 persons, with each of the 15 councilmen appointing 3 members, the mayor appointing 45 members, and a task force of community persons selecting 60 persons to represent community organizations. Those appointed to the Council on Aging were selected with considerations for geography, ethnic background, sex and age. One hundred and eight members are over the age of 60.

The purpose of the council is:

To represent the aged; serve, create, implement and/or aid activities for older Americans;

To advise the mayor and city council on all matters pertaining to senior citizens;

To advise on the creation of a center of information and referral for the older Americans of the city;

To serve as an advocate to upgrade the status of the aged.

One of the exciting projects that is planned is a conference on children, youth and senior citizens. Approximately 2,000 youth, senior citizens, representatives of organizations, public officials and public and private agency people will convene to discuss priorities and programs on October 9 and 10. Papers covering areas of concern, present programs and possible alternatives will be distributed in advance to participants. One hundred discussion groups will be formed on various issues. The conference will be followed up with meetings in geographical areas of the city to implement programs, make recommendations and to monitor progress.

The goals of this conference are:

To find ways to work together toward a better quality of life for all Los Angeles residents before and after their self-reliant years;

To examine and assess existing programs, both private and public, choosing priority concerns for city departments and ongoing community groups to address them with innovative action;

To identify the common human needs of the young and the old and to discover which require public programs and which can best be met by helping each other.

In addition to the conference, we have been working to meet the special needs and requirements of the elderly of the city.

TRANSPORTATION CONCERNS OF ELDERLY AND HANDICAPPED

The vast complexities of establishing an accessible transportation system has been a primary concern of this administration. The unique concerns of senior citizens and the handicapped have received special consideration in these efforts.

We have learned that physical barriers, such as high boarding steps on buses and the isolated location of transportation routes, often discourage older persons from taking advantage of existing facilities. Climbing up a 14-inch bus step can be the same as pole vaulting for some of the elderly. We hear tales regularly of older persons stumbling and falling, often breaking legs and hips.

Our attempts to eliminate these barriers have included the mayor's efforts to encourage the Southern California Rapid Transit District, which operates the buses in this area, to start using specially equipped minibuses for service in high density senior citizen areas. Recently, the Rapid Transit District announced that six of these special buses will be put into operation soon.

In developing a version of a demand response program, the selection of target areas to be served by this program was made after intensive evaluation of census data to pinpoint areas of elderly concentration. Shortly, four areas of the city with high concentrations of senior citizens, Hollywood, Fairfax, Westlake, and Pacoima, will begin either a Dial-A-Ride or some version of demand transportation response program where residents can call a central switchboard from their home, be picked up and taken to a prescribed location. Other demand response programs already are operating in East Los Angeles and South Central Los Angeles under the model cities program.

Another innovation in our transportation system which helps older citizens gain access to services is the park-and-ride program. By parking at a remote terminal point people can board an express bus to ride into the downtown area for shopping, health care, public services, or whatever.

Community transportation improvement is one of the most sorely needed services in this automobile-dominated area, particularly for the estimated 40 percent of the population which does not have access to transportation at the present time; the elderly, the poor, the handicapped, and the young. While this administration is committed to developing a regional transportation system, the mayor has been in the forefront in advocating the need for equally effective community services. I have already mentioned some of these community-level services, minibuses, demand response ride, and park-and-ride.

Other examples are jitney buses, reduced fares for buses and taxis, and carpooling.

Outside of the special need to increase the mobility of senior citizens in Los Angeles, the elderly of this city share other problems and concerns with older people throughout this country.

CONSUMER FRAUD AND THE ELDERLY

I am sure that all of you have heard many sad stories about unscrupulous merchants and con men stealing older peoples' savings by not delivering the products or services they promised. Consumer fraud is a constant worry of older people, particularly those who do not understand or speak English very well.

The Consumer Affairs Bureau of this city has recognized these special concerns of the elderly and will launch a consumer education program for the aging which will go into operation this fall.

Also, gaining access to inexpensive, competent legal services is a major problem for many older people. I understand other people who are scheduled to appear before you today will discuss this subject in great depth, so let me only say that the mayor's office and the city attorney's office are working on developing a program to use paralegal aides and attorneys to make legal assistance available to all of those who need it.

This administration has also initiated programs to meet the needs of the elderly in such areas as nutrition and housing.

During this time of rising costs, elderly people are forced to live on fixed incomes that are rapidly losing their purchasing power. Many of these people are not getting enough to eat, with reports of some even resorting to eating dog food to survive. We have, with the help of Federal assistance, been able to provide hot meals for some of those who need them. This program needs to be expanded so that no one has to go without getting good food that insures proper nutrition. We are in the process of establishing joint projects with private industry to rehabilitate existing housing and to build new homes. Recently, the council passed an ordinance and it was approved and signed by the mayor which requires that builders provide at least 15 percent of the units in new developments of five units or more for low and moderate income persons. This step is a revolutionary approach for a city the size of Los Angeles to meet its obligation for providing low cost housing.

We have also begun looking into all of the city departments to see what they are doing or can be doing for senior citizens. We are supplying technical assistance to them to develop new programs using existing resources. The mayor's office is working closely with the city council to develop coordinated programs to deal with senior citizens' concerns.

RECOMMENDATIONS FOR FEDERAL ACTION

Of course, the city of Los Angeles cannot solve the specialized problems of its elderly residents on its own. We need guidance and support from the State and Federal governments. To wrap up my testimony, I would like to mention several specific areas where the Federal Government can be of assistance to us in our efforts.

First, we would like to have more flexibility in the guidelines and regulations for obtaining program funding. They should be made more responsive to the needs of individual localities. What is good for Philadelphia or Chicago is not necessarily the best approach for Los Angeles. We need flexibility to meet unique demands and needs in our own communities based on an understanding of what they are.

Second, we would like to see greater emphasis placed on funding direct services themselves, decreasing the money spent on research and administration. Now is the time to make a strong financial commitment to service programs that reach the elderly directly.

And, finally, those of us who administer services need to have program funding for a minimum base period of at least 3 years. We cannot carry out programs effectively on a year-to-year basis, not knowing whether a particular program will have enough money the next year. With minimum period funding, together with an on-going planned evaluation process to determine which programs are working, we can do a much better job in meeting the needs of our elderly citizens.

We recognize that other levels of government are involved in the deliverance of services to senior citizens, such as in the area of health care. We are working closely with county, State, Federal Government, and the private sector to insure that the best possible services are provided for the elderly and intend to intensify this coordination.

Once again let me thank you for this opportunity to appear here today to explain what we are doing in Los Angeles. I hope these hearings will be informational and productive so that you can assist us in our important work.

Senator TUNNEY. Thank you, Mrs. McFarlin.

STATEMENT OF SAMUEL KOLB, CHAIRMAN, LOS ANGELES COUNCIL ON AGING

Mr. KOLB. Senator Tunney, my name is Sam Kolb. This morning I would like to address my testimony on the American Indian.

Some 150 years ago the Federal Government decided they would set up some reservations throughout the United States for the protection of the American Indian. At that time they provided the services such as health, welfare and education, but in 1934 the Reorganization Act dismantled. All those services being provided at that time ceased and from that day forward the American Indians have not had any services to speak of.

I would say, at the present time there has been no demographic study made upon the American Indian. Very little is known of their need and of their frustration. There is very little known about referral services. There is no parallel services for our people. There is no hospitalization. There is absolutely no inservice care. There are no rest homes for these people. The distances between adjoining cities and towns make it very difficult for traveling; makes it very difficult to get there.

Let me give you one example this morning. If, for instance, this morning, right in this hall, one of you were stricken with some kind

of illness, within a few minutes you would be taken care of. On reservation level it would be hours, sometimes 24 and 48 hours before this individual is taken care of. And we are saying that the mortality rate of our elderly people is something like between 50 and 65, and the mortality rate of our children is very low.

I had word last night from Escondido, Calif., where my mother lives, she is 79 years old, she fell out of bed, she is not hospitalized. She has no inservice care, she doesn't know the way around to get help from the aid, and this goes on day in and day out. So I would like to say to you this morning that services must be provided, and some of the priorities for our people are the priorities that do exist in the city of Los Angeles.

I am very hopeful that the Federal Government, because that is who we deal with, we have a direct line to the Federal Government and they are the ones that are responsible, we have our own reservations, we have our own councils, our own governing bodies, and these are the people we have to deal with. We cannot go into your cities, we can't go into your States and say we need this and we need that, because that is not provided for us. They are provided through the Federal Government. So hopefully this morning through our Senator Tunney and all of us here we can implement something to alleviate the problems and the suffering of American Indians throughout the United States.

With that, I thank you, Senator.

Senator TUNNEY. Thank you very much, Mr. Kolb. Thank you, too, Mrs. McFarlin. We appreciate your being with us today. Thank you for the thought that went into both of your statements and also the feeling that went into it. We appreciate your being here.

Our next panel includes some elderly clients, Della Garcia, Jose Martinez, and J. W. Kempel.

It is my understanding that Mrs. Garcia will be speaking in Spanish and her statement will be translated.

**STATEMENT OF DELLA GARCIA, HOUSEWIFE; ACCOMPANIED BY
JOSE MARTINEZ, PRESIDENT, SPANISH-AMERICAN COUNCIL OF
SENIOR CITIZENS; MEMBER, LOS ANGELES COUNCIL ON AGING**

[The following statement was translated by an interpreter.]

Mrs. GARCIA. My name is Della Garcia. I am a 57-year-old housewife. My husband is 69. He receives Social Security and SSI benefits but I don't receive anything because I am not old enough.

In the past few years I have had some legal problems and I haven't known where to go for help that I could afford. Three years ago my son got into trouble. A friend told us to go to a private attorney in Los Angeles. He told us that it would cost \$50 to start and another \$250 to appear in court. We couldn't afford that. My son went to court and had a public defender appointed for him, who told him to plead guilty, even though he wasn't. We didn't know about the public defender.

Two years ago we got a telegram that said we had 24 hours to pay \$850 in past-due interest on a home loan we had taken out. The man who wrote the contract had forgotten to include the interest in our

payments. At that time we only had one more payment to make, but after we went to the loan company we had to take out another loan for more than \$1,000 to repay the interest on the first loan, plus interest on the second.

Now my daughters are having trouble and we need a lot of help. One of my daughters ran away and left her five children with me. I went to the welfare department and they told me that I should be declared their guardian so that I could receive support payments for them. I went to legal services because the welfare department told me that I should go there for help, but they charged me money and didn't help me. A friend told me about Mr. Martinez and the Mexican-American Council. He helped us get declared guardian by the court and now we receive money for the children.

My other daughter is also having trouble. Her mother-in-law hired a lawyer to get a divorce for her son. My daughter didn't have a lawyer so she went to court without one and was divorced. Then the mother-in-law wanted to take her two kids away, too. She didn't know what to do. She asked me to help. I remembered Mr. Martinez and asked him to help. He appeared at the hearing and got us some more time to prepare our defense. Then he talked to the other lawyer and got him to stop trying to take away the kids. Now he is helping us get child support from my daughter's ex-husband before the 60-day period ends.

I don't know what we would have done without Mr. Martinez. I speak and understand English but not very well and for me it is hard to deal with the Government and lawyers who are against me. We are so grateful to Mr. Martinez and the Spanish-American Council of Senior Citizens that we leave a small donation for their help every time we go there.

MR. MARTINEZ. At this time the only thing I would like to say is that the Spanish-American Council is trying to get funded and any help that we could get that way would be great to keep on helping these people because we are not represented in any bureaucracy, we are representing the people direct.

Thank you, sir.

SENATOR TUNNEY. Mr. Kempel, you are going to be testifying?

MR. KEMPEL. Yes, sir.

SENATOR TUNNEY. Please go ahead, Mr. Kempel.

STATEMENT OF J. W. KEMPEL, RETIRED SALES REPRESENTATIVE, PITTSBURGH PLATE GLASS CO.

MR. KEMPEL. My name is Jack Kempel. I am 67 years old and a resident of La Habra, Calif., in Orange County. I have worked for the Chrysler Corp. at two Detroit plants and two California plants. At the Los Angeles plant I worked 7 days a week, 10 to 12 hours each day. I had to quit or lose my wife. She said she had her fill. I never took a day off in all 22 years, except when sent home or at vacation time.

Before quitting Chrysler I was assured by the plant manager that the deferred pension starting September 1, 1955, and covering all employees such as I was secure and would cover me. I quit Chrysler

August 31, 1955. On August 26, 1968, I started inquiring about my pension status at Chrysler Corp., Detroit, as I was instructed to do in 1955. I then was told that I had missed by one day and would not receive a pension. Had I not been told by the plant manager that he had taken care of me, I could very easily have worked the one day required.

After receiving the Chrysler letter I started looking for legal help. I contacted public interest law firms and found none interested at that time. So in 1968, as I was still working but would retire soon and wanted to make sure that we would have ample income in our years ahead, and, as you know, time is not on a retired person's side, and for all the older citizens things do not move fast or easy, I wrote letters to at least 20 Government and private organizations and all gave me the same advice, seek legal aid. So in 1970 I contacted a private law firm in Michigan. Their reply by mail was that he would fly to California at my expense, take depositions at \$200 to \$300 each, required \$1,000 in advance, another \$1,000 when the case was closed. Not being rich, we couldn't retain him.

HIGH COSTS TO OBTAIN JUSTICE

I next went to public advocates after I retired. They said they would take my case. Later, however, they changed their minds, stating that mine wasn't a law reform case and referred me to the National Senior Citizens Law Center. They, in turn, advised me to contact the local legal service office. They could not handle it because of my limited pension and Social Security income. I contacted Senior Citizens Law Center again. They had me contact an attorney, who is taking my case at \$45 per hour. It sure costs a retired man a lot of money to obtain just a little justice, especially since this is a huge risk venture.

I conclude. I would not need the lawyer today, but how do I prove anything without one. I am not poor, so I don't get free legal help. I am not rich, either. I have a fixed income, and with inflation going the way it is, all I am doing is getting poorer at \$45 per hour. That's a huge chunk out of any benefits I receive, but I feel that the Chrysler pension is mine and I want to fight to get it. It's just that at these prices it's almost not worth it, except for the principle of the thing. But why shouldn't I have my day in court just like the rich and the poor? Why can't we get legal or prepaid legal insurance of some sort, or do we have to be below the poverty level to get help? We have plenty of law schools, why couldn't we turn to them if need be. We don't want to be passed by in our late years, but we do need help and some encouragement from the legal profession.

I thank you, Senator.

Senator TUNNEY. I want to thank both of you, Mr. Kempel and Mrs. Garcia, for your statements.

I think what you point out very graphically is that the average senior citizen who has a legal problem has great difficulty in finding an attorney to provide legal services at a price that can be afforded. We all recognize, I am sure, that attorneys have to live and make money the way other people do. The point is, however, that we ought

to have a far better means of giving senior citizens, as well as middle- and low-income individuals in general, greater access to the talents of the legal profession so they can pursue, in the appropriate forums, their rights.

I think there is nothing any of us could say that is more eloquent than the statements that you two have made about your very specific problems and how totally frustrating it was not being able to get the assistance until, in the case of Mrs. Garcia, Mr. Martinez helped, and in the case of Mr. Kempel, he was willing to pay \$45 an hour to get a lawyer.

I want to thank you both very much.

Mr. KEMPEL. That's a big chunk of money for us.

Senator TUNNEY. You bet your life.

Our next witnesses are a panel of lawyers and a lay advocate: Thurman Fletcher, senior aide, University of Southern California Community Service Center; Alan Goldhammer, partner, Goldhammer and Kaufman, and president, West Hollywood Bar Association; Donald Perkovich, director, Legal Center for the Elderly; and Michael Gilfix, attorney at law, director, Senior Citizens Legal Aid Office of Palo Alto.

Welcome.

I don't know how you want to decide who speaks first, but why don't we just go from left to right or right to left, unless you have made a decision otherwise.

Mr. FLETCHER. Shall we talk according to the program schedule here? I think that would expedite time, Senator Tunney.

Senator TUNNEY. Fine. So we have an opportunity to ask some questions, it would be helpful if you could abbreviate your opening statement. If you have a prepared statement, it will be included in the record as if read. If you don't have a prepared statement, I would appreciate it if you would limit your testimony to 10 minutes.

STATEMENT OF THURMAN FLETCHER, SENIOR AIDE, UNIVERSITY OF SOUTHERN CALIFORNIA COMMUNITY SERVICE CENTER

Mr. FLETCHER. Senator Tunney and members of the committee: My name is Thurman Fletcher. I am age 67. I have been in Los Angeles since 1937. I have been involved in professional social work since 1933. I am now in my second year of retirement as a social worker with the County of Los Angeles, Department of Adoption, and I am now employed as a senior aide at U.S.C. Community Service Center.

Some of the barriers affecting the elderly in seeking legal aid: There is a fear of reprisal for their complaints. Historically, elderly persons were represented by legal custodians or public guardians of the system. In an effort to institutionalize the person they are representing, it seems their choice was not one of service but that of a violation. Seldom was there family intervention, due to the lack of knowledge and understanding of the function of the law.

The lack of positive legal attitudes and statements of punishment or other reprisals often nurtured the seeds of fear. Many of the

seniors don't know how to obtain legal representation. Due to their lifestyle as "Do as you are told and ask no questions", routine work and patronizing could inhibit the effort to seek redress.

BARRIERS TO EFFECTIVE REPRESENTATION

High retainer fees are prohibitive for many of the seniors. At this point a large segment of the elderly are living at poverty level, Social Security, low fixed income, as has been demonstrated in discussion before. They are denied legal redress due to the lack of ability to pay.

Too many intermediaries harbor in our Federal programs. The function and structure of the program, personnel, means tests and other eligibility requirements, are often frustrating, demoralizing, as well as dehumanizing. The bureaucracy which many of we seniors face, those who do describe and develop and coordinate programs do so in semantical jargons, only having meaning for them. They deny the senior the right to be heard and to participate in the total process.

Language many times often inhibits the individual's initiative to seek services. The function and development and structure of these bureaucratic programs could suggest non-helpful attitudes. Although some programs are good, the procedure must be simplified to be effective, such as more everyday language, colloquialism, recognizing that poverty within itself is a culture, the ghetto is a culture.

Seniors who live in a particular lifestyle and frame of reference from our work ethic and production and the G.N.P. often find it very frustrating in trying to plan from day to day. Thus we come out many times with negative value systems and we are stigmatized quite often by being referred to as being "apathetic".

My role as an advocate, some examples. Auto repair bills negotiated by telephone; possible mail fraud by correspondence, referred to the Postal Inspector; alleged malpractice, eye surgery, suggested A.M.A.; sale of real estate, suggested bank property management; home repair subsidy for client receiving SSI, contacted DPSS Service Deputy; determination of eligibility for labor union pension, referred to National Senior Citizens Law Center. Those that I report here we did have positive results.

At this point in time I would like to express our appreciation to the law students at the University of Southern California who have done a wonderful job in cooperating with us. They have developed for us a program of landlord-tenant affairs, consumer affairs, as well as income tax information. Again, thanks to those wonderful students.

Anxiety is a feeling of deprivation of many clients. Anxiety could be the residue of a frustrating experience when seeking a service often denied. Here at this point in time I would like to reflect a personal feeling here, that many times we seniors do not know what a service is, how to use a service, and very little preparation is given the individual to use or participate in the service that is being sought out. Again, I think this is one of the deterrents to a well-balanced service program for we seniors. Most lifestyles change and increase some feelings of deprivation. If we could be supported in our efforts and attitudes regarding the senior, I am sure that we will find them just as meaningful, productive, and valuable to our society today as they were when we were a part of the G.N.P.

Another flower or praise, if I may. I would like to express our appreciation to the American Bar Association here in Los Angeles who oftentime refer persons to us. We appreciate their confidence in us and what we may do for them. Many of our public and private agencies also refer individuals to us for service. Many senior citizens organizations, clubs, and groups have used our service.

In closing, I would like to say, please, somewhere along the line try to redefine and insulate the function and structure of legal aid for the poor.

Thank you so very much.

Senator TUNNEY. Thank you very much.

STATEMENT OF ALAN GOLDHAMMER, PARTNER, GOLDHAMMER & KAUFMAN; PRESIDENT, WEST HOLLYWOOD BAR ASSOCIATION

Mr. GOLDHAMMER. Senator Tunney, members of the committee, ladies and gentlemen. I will summarize my remarks and submit my prepared statement for the record.*

I appreciate very much the opportunity to present to you my views concerning legal representation of the aged and disabled in Social Security, Veterans' Administration, and related claims.

I speak as a private attorney engaged extensively in welfare litigation. I also speak as president of the West Hollywood Bar Association and as former director of major case developments for the Legal Aid Foundation of Los Angeles.

Virtually every week I receive a phone call from a veteran concerning the denial of his benefits. This week, for example, I received a call from a man suffering from the residuals of meningitis contacted in the Korean conflict which has left him unable to walk and with a severe speech impediment. He has attempted to obtain his service connected disability benefits ever since that time unsuccessfully. I had to tell him that while I was willing to review his records and advise him without charge, I could not afford to represent him because I would have to do so without compensation. Federal legislation prohibits me, as a practical matter, from representing any veteran with a claim for disability benefits, because I cannot accept more than \$10 for fees, regardless of whether the basis for fees is contingent and regardless of my client's wishes.

Last year, time permitting, I represented two veterans without charge. Both had attempted for years to obtain representation and both were dissatisfied with the assistance they had received from veterans' organizations. Complaints concerning the quality and motivation of such organizations are typical in the inquiries I receive.

In one case, involving the question of whether a neurosis had been brought about by a service-connected pulmonary impairment, the service-connected benefits were doubled. In the other case, nonservice-connected benefits were awarded, and I believe that had the Veterans' Administration's decision denying service connection been reviewable in a court of law, such decision would have been reversed as utterly unreasonable.

* See prepared statement, p. 17.

These examples show that veterans will benefit from representation by motivated attorneys. A system in which one is permitted to contest decisions only when one appears without representation is not a system of justice. Representation by service groups is not the kind of skilled representation veterans require. Legal aid organizations lack sufficient personnel to provide sufficient attorneys. However, the past-due benefits in a typical veteran's case clearly permit the use of private attorneys on a contingent basis which would not unduly deprive the veteran of his award nor fail to adequately compensate the attorney with sympathy in this area.

The contingent fee is one of the greatest characteristics of the American system of justice. It has permitted the average person to sue the large corporation with some parity. It has brought about changes in industrial standards because of the threat of litigation. And it would allow for representation of claimants in such matters as Social Security or veteran's claims.

REPRESENTATION AT ADMINISTRATIVE LEVEL NECESSARY

Representation of such claimants is vitally necessary. The claimant needs an attorney to investigate adverse medical or factual data, to provide favorable medical or factual data, to represent the claimant by examining and cross-examining witnesses, and to present legal precedents and other bases for a favorable decision. The average claimant for such benefits with a background in semiskilled labor and a high school education is ill equipped for combat with an administrative agency.

In a typical Social Security case the claimant comes to the attorney after several administrative denials of his claim. Perhaps he has a complaint of back pain. He has been denied, although he is using crutches or is in a wheel chair. He has received often only the most perfunctory medical care and the reports submitted to Social Security consist of one-time examinations which report unverified lower back pain, and he is turned down because his back pain is indeed unverified. The attorney arranges for proper medical care, discovering that the diagnostic tests which should have been performed had never been performed. When the attorney discovers what the true impairment is, he is then in a position to cross-examine and discredit adverse reports.

In one such case our client had suffered for ten years in a wheel chair from back pain while the Veterans' Administration and Social Security doctors claimed he was simply unmotivated to work. Surgery ultimately proved that he was indeed suffering from a herniated disc. He had been suffering from pain for so long that he had developed a psychotic depression which continued after surgery, even though the root cause had been essentially corrected.

The claimant must have someone on his side capable of evaluating medical evidence and making legal decisions as to how to obtain favorable evidence and how to legally disprove unfavorable evidence. Moreover, the attorney performs a valuable function in discouraging the true malingerer from suit.

Even though veterans' claims and Social Security claims typically involve more money than do the average personal injury or work-

men's compensation claim, the use of an attorney in administrative matters is rare. This lack of use relates to the claimant's view of the administrative agency as a helpmate and also the difficulty the average person has in finding an attorney. Our office reviews many claims weekly which come in too late, hearings have been held, appeals are final and nothing more can be done. The claimant vows he had wanted to find an attorney but was unable to find one, due in large part to the lack of organization on the part of the bar. Had such individuals reached a skilled attorney in time, they would have received their benefits, in all likelihood.

Attorneys shy away from representation of such claimants. With veterans' claims the reason is clear, there is no possible remuneration under present laws. In the case of Social Security claims, the complexities of the procedures and the difficulty in obtaining payment influence many attorneys away from representing claimants.

CUMBERSOME AND SLOW PROCEDURES

I talk to numerous attorneys who have handled a Social Security claim once and would not do so again. There is no information available on the steps to take in representing a claimant. The procedures are cumbersome and slow. The administrative process takes four steps. There is no need for the reconsideration level and it should be eliminated so as to save the taxpayers' money and the claimant's time. The delays in the administration of Social Security claims are phenomenal. The client may well wait 2 to 3 years from the first date he applies until he reaches a hearing when he can actually present evidence. From the attorney's point of view these delays are unproductive and after the hearing from the attorney's point of view the delay in getting paid is unbelievable. Not only does the attorney have to file a petition for his fees, which is an insulting process, but it takes several months to a year or more after the hearing and after the client has received his benefits before the attorney gets his fees approved and gets paid. Cash flow then becomes a major problem to attorneys who do any extensive Social Security work. Even when the client is delighted with the fee and says so, the administration often lowers the agreed-upon arrangement. The administration fails to recognize that law is a business like any other business. Medicine cannot be practiced at a loss and neither can law.

Experienced administrative law attorneys are far more valuable to a client than inexperienced attorneys. In order to attract attorneys who will concentrate in such areas as Social Security litigation, the administration has to make allowances for the contingent nature of representation which it does not do at present. At present if one takes four cases and loses one while winning three, he may well operate at a loss because the award on the winning cases is based on a per-hour schedule. Windfalls are not permitted. If the purpose of the petition for fees is to protect claimants from attorneys, then it is clear that attorneys need protection from the Social Security Administration.

RECOMMENDATIONS

I would thus urge your committee to encourage legislation providing Social Security with sufficient personnel. Perhaps this can be

accomplished through elimination of the reconsideration step in the administrative process. The standards for determination of reasonable attorney fees should be liberalized so as to account for the business of law, and so as to not interfere with an arms-length attorney-client relationship. The entire fee should be guaranteed. When an award exceeds 25 percent of the total recovery, as it often does, the attorney is presently entirely unprotected.

I would urge your committee to eliminate the restrictions on fees in veterans cases which prevent veterans from obtaining justice. Finally, I would encourage some thought to the question of government subsidy of fees if it is felt that it is not fair for the claimant alone to bear the cost of fees where the claimant prevails against the government. I believe that studies will verify that a modest subsidy in cases where the back award does not allow for a sufficient fee will actually be a less expensive system than one of federally paid legal aid. Finally, any system awarding fees to attorneys and against claimants should be subject to court review. Court review is necessary to protect the integrity of the system.

The public desperately needs good legal representation in Social Security and veterans' claims. Your committee has the opportunity to bring about such changes as will permit the representation of claimants via procedures and fees that will be reasonable to both attorneys and claimants.

Thank you.

[The prepared statement of Alan Goldhammer follows:]

PREPARED STATEMENT OF ALAN GOLDHAMMER

I appreciate the opportunity of setting forth my views concerning legal representation of the Aged and Disabled. By way of background, our office is perhaps the only private law office on the West Coast engaging extensively in social security and related welfare litigation. We regularly litigate social security claims not only at administrative levels but in the federal courts as well. I am also President of the West Hollywood Bar Association and previously was Director of Major Case Developments for the Legal Aid Foundation of Los Angeles. I thus speak with expertise in this area, not only as a private attorney but as someone who has the interests of the elderly and the disabled at heart.

THE NEED FOR LEGAL REPRESENTATION

The threshold question is whether or not attorneys are needed in such areas as social security claims. The Social Security Administration has four levels of review—initial application, reconsideration, hearing, and administrative appeal. Despite these four levels of review, a study by Judge Feinberg in *Scott v. Celebrezze*, 241 F. Supp. 733, 736 (S.D. N.Y. 1965) noted that in volumes 227 to 236 of the Federal Supplement, the Social Security Administration was reversed 47 times and upheld only 27 times. District Court Judge Higginbotham noted in *Seldomridge v. Celebrezze*, 238 F. Supp. 610, 620 (E.D. Pen 1964) that the government was reversed 75% of the time in a three month sampling of reported cases. Such statistics support the proposition that Social Security claims warrant representation. If judicial review was open to veterans' claims, I believe the statistics would be even more unfavorable to the government, judging from the cases I have reviewed and the complaints I have received.

Studies have shown that the average layman does not feel a need for an attorney in an administrative area because of the feeling that the administrative agency will play "fair." The bureaucratic psychology requires the administration to make decisions where each favorable decision in sum adversely affects the budget of the agency making the favorable decision. As such, deci-

sions will necessarily tend toward the negative. Human beings have to decide entitlement to benefits and where decisions are made by human beings, error is possible.

Most social security or supplemental social security benefit claims and veterans' administration claims typically involve the question of disability. While at first blush disability may seem to be a medical question, the uninitiated have no idea how inexact medical science can be, particularly where the question of individual human limitation has to be measured. In personal injury or workmen's compensation claims, people typically use attorneys because the public is well aware of the fact that medical evaluations differ from doctor to doctor. Thus trials occur where both sides agree as to liability but cannot agree as to the extent of damages. Trials occur in which "plaintiffs' doctors" testify against "defendant's doctors". Medical opinions and judgments may legitimately differ and our system of justice requires the trier of fact to determine which doctor has the best command of the facts and which doctor appears most reasonable. For example, one doctor may feel that someone with a particular type of severe emphysema can work while another doctor will differ. One doctor may feel that a back injury is slight and that the patient is malingering whereas another may feel that the symptoms are real. Often no objective evidence can necessarily confirm disability. The pain may be "hysterical" or psychogenic in origin. Xrays may be in dispute. The question of residual capacity may be highly arguable. And so on.

The average person applying for social security, veterans or supplemental benefits has a high school education, at best, and a work history of unskilled or semi-skilled labor. He is no match for the judges in the administrative agency nor the agency's medical evaluators. Such medical evaluators are essentially paid to disprove claims of disability. This causes a predisposition to disbelieve the claimant if there are no "objective" signs of disability. Several times we have had cases where doctors testified there was no disability although the claimants were in wheelchairs and unable to walk. Claimants cannot afford the best of medical attention. The claimant without an attorney is at the mercy of his local doctor who often lacks the time or desire to write a detailed report; the local doctor's reports are often conclusory, unconvincing and often unintelligible. In contrast, doctors used by the administrative agencies are trained to write reports which, at least at first glance, appear comprehensive. I have often discovered that what appeared to be a three page detailed report represented only a three minute evaluation and a "stock" report churned out by the doctor again and again. The attorney is needed to be certain that the administrative agency's medical experts have really taken time to evaluate the claimant and have really inquired into the claimant's symptoms. So often such experts have not done so. Recently, three private doctors described our claimant as an incurable psychotic; the social security experts could find nothing wrong. An important reason for having an attorney is so that the claimant has access to doctors who are predisposed to believe, rather than disbelieve, the symptoms of the claimant and who will seek to verify such symptoms, if an impairment truly exists.

Any case which has been denied at intake and reconsideration levels will benefit by having an attorney at the hearing level. Our office turns down one to two cases every week because the claimant comes to seek representation too late. The claimant has already been to a hearing and while there was medical evidence, which to a sophisticated eye could have been challenged, cross-examined and discredited, it is now too late. The claimant alone is no match for expert medical and vocational witnesses. Such witnesses are often believed even when their testimony is incredible so long as the claimant has no representative present. For example, there was a case where my client, with severe emphysema, lost a hearing because the vocational expert testified he could work at a hospital cafeteria. The case won on appeal easily but what if the client, discouraged by the hearing, had given up, which he had come very close to doing because of the difficult he experienced in finding representation.

QUESTIONS OF CREDIBILITY

Social security and supplemental income claims and veterans' claims typically involve questions of credibility and questions as to the nature and quality of evidence. Such questions require that a skilled "presenter of facts" be on the claimant's side.

Still another reason for having an attorney is for factual investigation, to find witnesses who will verify seizures or neighbors who will verify reclusive behavior. So often the agency's investigation, because of lack of time, is cursory. The claimant desperately needs someone who will believe him and who will seek to verify the claimant's version of the facts. This is the attorney's function—to advocate his client's interests.

The economic effect of such litigation on the claimant is great. One would normally advise a client with a workmen's compensation or personal injury claim over \$500.00 to seek legal representation, yet although social security claims involve benefits for the balance of a claimant's life, often exceeding \$100,000.00 in cumulative benefits, representation is seldom sought. The evidentiary and procedural questions involved in a social security claim are more complex, as a rule, than a typical personal injury, divorce or probate although attorneys are usually involved in such matters. Veterans' claims are even more complex than social security claims particularly from an evidentiary point of view because the issue is often the percentage of disability while the individual was in military service. In the areas being discussed, the level of legal skill required is sufficiently high so that I would not recommend use of paraprofessionals except in preparing a case for an attorney under an attorney's supervision. Actual representation of a client by a paraprofessional alone would be a disservice to the client.

Many reported cases, including cases from this office, have involved years and years of litigation, going through appellate levels, obtaining remands, getting new hearings, and going back and forth through the administrative and court system. Such cases would never have succeeded without an attorney's assistance. A system which proceeds on a chance basis—if you have a "good" intake worker you get benefits and otherwise you don't—is not a fair system. The opportunity to rebut the government's denial of such claims is a fine tribute to our American system of justice. If this opportunity is to be meaningful, adequate representation of the claimant is essential.

WHY HASN'T THE PRIVATE BAR BEEN ACTIVE IN SUCH LITIGATION?

In connection with veterans' claims, the answer is clear. The \$10.00 limitation on fees is one of the most absurd infringements on human rights since segregation was the law of the land. Such limitation hardly allows the attorney to interview a claimant much less represent him. Since the amount at stake in a typical veterans' claim is substantial, the true barrier to attorney representation clearly lies in the fee limitations. Our office refuses numerous veterans' claims for such reason and such reason alone.

I represented veterans twice, each time without fees, as a favor to the client and because of the pro bono nature of our firm. Each time I was duly reminded by personnel with the Veterans' Administration that it would be a crime if I charged a fee. I believe that the tone of such conversations constituted attempts to discourage me from representing veterans. I wasn't even allowed to review the evidence until I had expended a great deal of effort because only a recognized agency can review evidence, which meant that any layman from the American Legion could have reviewed the file while I, as an attorney and the chosen representative of the claimant, could not do so. Until veterans' claims are reviewable in a court, however, attorneys will be of limited value. Without the threat of judicial review, the attorney must operate under a severe handicap.

Fee limitations do not provide a great barrier to attorneys in the social security area. Attorneys are, unfortunately, ignorant concerning the nature of a social security and payment of fees in connection therewith. Since clients can't pay fees in advance, the attorney can only represent such claimants on a contingent basis. Attorneys are often under the mistaken impression that fees are drastically limited. Within limits this is not the case. Also, attorneys lack expertise in this area and there are no courses nor textbooks available. Still another reason for the lack of attorneys is the lack of clients. Clients don't recognize the need for attorneys or, those that do, find it difficult to find those few attorneys in a metropolitan area who will accept such cases. Given the restrictions on advertising, an attorney who wants to specialize in this area has a very difficult time in building the kind of volume that a specialized "low-fee" practice of this kind would economically require. An educational process for both clients and attorneys is necessary. Referral systems for Bar

Associations need coordination so as to direct clients to those few attorneys who have expertise. Courses need to be provided for attorneys interested in learning about social security and related laws.

While the limitations on social security fees are not as drastic as most attorneys believe, there are limitations. The attorney is limited to 25% if he prevails before the District Court and, at administrative levels, the fees must be approved by the Administration. Frankly, these limitations are reasonable. I would suggest that the 25% limitation be lifted and that all fees simply be made subject to approval however. The more limitations thrown at attorneys, the more difficult it will be to encourage attorneys to represent such claimants. Twenty-five percent is adequate in the majority of claims but would not be adequate if the back award is small or the case extremely complex and time-consuming.

Another major limitation is the fact that the Social Security Administration will not take into account the fact that work is performed on a contingent basis, which is usually the case. The Administration is unsophisticated regarding the business of law. In personal injury, lawyers survive because windfall cases make up for losses. This is the beauty of the American system of justice because without the contingent fee attorneys could not afford to represent any but the very wealthy in society. Where an attorney has created a large back award and has economically expended only a small amount of time, an unduly small award is unwise. The attorney's business is adversely affected when he can never recoup the losses he has had. Unless the attorney has had losses, he isn't representing enough claimants.

Another reason why attorneys shy away from the Social Security area is because fees are unprotected. This criticism is true in the supplemental benefits area as well. Social Security will insure at present that 25% of the back awards will actually be paid to the attorney-representative. If the fee award is greater than 25% then that portion of the fee award greater than 25% is utterly unprotected. As a practical matter, attorneys don't want to collect against their own clients, and, in any event, social security claimants would be judgment proof.

While 25% of an award seems reasonable, many awards are quite small. We have found that even 40% of the past due award, which is our self-imposed limitation, often does not compensate us on an hourly basis commensurate with other types of practice. The unprotected nature of the fee then is a major burden. If a fee award is made, after full disclosure to the client and full opportunity to the client to object to the initial award which is required by law, then Social Security ought to be able to guarantee that the attorney will actually obtain his approved fee.

In a workmen's compensation proceeding, the attorney will normally obtain some award—perhaps not as great a percentage of disability as he had hoped but it is rare that he will receive a take-nothing award. In Social Security every case is an all or nothing situation. If the attorney is to perform a real service to the public he cannot and should not accept only the "easy" cases where error is clear but should accept the difficult cases as well. This means, in the business of law, that there must be some way of making up his losses. There is no such way if the standards for approval of fees do not take into account the contingency nature of representation and further do not guarantee that the attorney will at least be paid the approved fee.

Still another obstacle is the time-lag between the date of award and date of payment. I have many cases where I obtained an award many months ago, sometimes a year ago, and I still haven't been paid. My client is already receiving his monthly checks but I haven't received compensation. This time lag creates an enormous cash-flow problem for the attorney interested in the social security area. Moreover, this is not a cash flow problem of a few months but of many months to a year or more for each and every case.

One obvious answer to the time-lag problem, which affects the client in his waiting for administrative determinations as well as the attorney in his waiting for fees after the determinations, is to have more personnel. I believe there is another answer. Social Security claims have four levels of review. The "Reconsideration level" of review which is the second stage is unnecessary. Three levels of review—application, hearing and appeal—are sufficient. If the application level is made more thorough when denial seems imminent, then

the reconsideration level is truly superfluous. From experience, I doubt that a significant number of cases are reversed at the Reconsideration level after having been denied on initial application. Even if that were the case, the answer lies in a more thorough evaluation of the application rather than a two-stage proceeding.

Attorney fees should be fully guaranteed and the administrative agency should allow for the contingent nature of fees in awarding fees. This would allow fees to become much more standardized than at present. For example, attorneys could be rated at their typical hourly rate. In Los Angeles that would mean an inexperienced attorney would be rated at \$35.00 to \$50.00 an hour, an average attorney at \$50.00 to \$60.00 per hour, and an experienced or specialist attorney at \$60.00 to \$75.00 an hour. A 10% to 20% penalty factor could be provided for attorneys who performed poorly (who won the case despite rather than because of their efforts) and a 20% to 30% bonus factor could be provided for attorney's who represented clients on a contingent basis because such attorneys assumed the risk of failure. Finally, the fees would be fully guaranteed, once approved, by the Administration.

Objection might be raised to such hypothetical system on the ground that the client needs the economic base which his back award represents and, further, that such client should not have to pay for the Administration's mistakes and, if he ultimately prevails, that tends to demonstrate that the Administration indeed was mistaken. I agree. It would seem to me that the Administration could guarantee that the client would not have to pay more than one-third of his past due benefits, by subsidizing any remaining amount due the attorney. From experience, this would require a subsidy in only a minority of cases and such subsidy would be small in the vast majority of such cases. While not an actuary, I believe that such a system of subsidy would be much less expensive than the present system which relies on representation by salaried legal aid attorneys. As a former legal aid attorney, I can recall many cases in which I received an award for my client which would have amply paid for a private attorney's fees, however, I had to represent the client because no private attorney would accept his case and I had to waive fees because that was the accepted standard for legal aid offices.

Subsidies would allow the attorney to represent clients in such areas as Medicare where a large back award is not present and where, accordingly, representation is least likely at present. The client can, however, in the existing system even slightly modified afford to pay an attorney. The question of subsidy relates more to the issue of whether or not society should bear the burden of attorney fees to welfare claimants. The back benefits award will normally permit representation, particularly if the fees will be guaranteed and if the contingent nature of representation is taken into account. Then the alternatives range from representation entirely paid for by the client to representation subsidized in part by the government. A third alternative would be representation by legal aid attorneys. At present existing budgets prohibit such representation. Representation by legal aid would be far more costly to the tax-payer than a subsidy system much less a system in which the client bears the costs of representation.

CONCLUSION

There is a need for the private bar in the area of social security, supplemental income and veterans' claims. This need cannot be met by paraprofessionals alone for that would disserve the public. This need could be met by legal aid agencies but cannot be met without the hiring of many more legal aid attorneys than are presently available. A legal aid system would be more costly to society and would compete directly with private enterprise, even if the system is not modified at all. There are attorneys presently who will present social security and supplemental income claimants. Such attorneys are too few. Since the claims being discussed are remunerative, only slight changes could result in the representation of all social security claimants not merely those fortunate few who find an attorney at the right time. The system of justice that applies to such claimants would be better if access to private attorneys was more available.

Senator TUNNEY. Mr. Perkovich.

STATEMENT OF DONALD M. PERKOVICH, DIRECTOR, LEGAL CENTER FOR THE ELDERLY, SACRAMENTO AND YOLO COUNTIES, CALIF.

Mr. PERKOVICH. I prepared a written statement* and I have submitted it to the committee and, therefore, I will keep my remarks at this time introductory and brief.

Senator, my name is Donald Perovich. I am the director of the Legal Center for the Elderly in Sacramento and Yolo Counties.

Last year the Sacramento County Legal Aid Society was quite worried because it felt it was not servicing the elderly poor of Sacramento and Yolo Counties. In the whole year prior to the initiation of the Legal Center for the Elderly, the Sacramento and Yolo Counties Legal Aid Societies serviced only 156 elderly poor. We felt this was due to the fact that many of the elderly poor in our community were not receiving legal services because of their language problems, transportation problems, or physical disabilities.

We went to the county board of supervisors of each county and asked for part of their revenue-sharing funds to finance our operation. They agreed with us and, as far as we know, Sacramento and Yolo Counties are the only counties that are utilizing revenue sharing funds for legal services programs, especially legal services programs designed specifically for legal representation of the elderly and the elderly poor.

We have three attorneys on my staff and nine paralegals. We cover five languages. Our paralegals are of all ages.

We feel that we have greatly increased the delivery of legal services to the elderly poor. Currently we have serviced 800 clients as compared to the 158 for the whole year prior, and we have only been in operation 9 months.

We also, I would like to report to you, very recently reviewed our cases and found that approximately a third of our cases deal with problems which we feel are peculiar to the elderly, such as income and health maintenance and housing, and we are in the process of conducting several surveys in the area of income and health maintenance, especially with the Social Security Administration under the new SSI program. As soon as the results of the surveys are compiled, we will forward them to your committee with appropriate recommendations.

NEED FOR SPECIAL LEGAL UNITS

Senator, since one of the primary purposes of these hearings this morning is to discuss improving legal representation of older Americans, I feel, and I would like to make the recommendation on behalf of our program, that every federally funded legal assistance program in the country be required to have a special unit which will deal with the legal problems of the elderly. When I say a special unit, that could be as little as one person on the staff who is sensitive to the problems of the elderly and who deals with the problems of the elderly, or it could be similar to our county where we have a separate unit of three attorneys and nine paralegals, or whatever is appropriate to the respective community. Every community should have as part of their federally funded legal assistance program a unit

* See prepared statement, p. 23.

that deals particularly with and is trained in dealing with the legal problems of the elderly.

Thank you, Senator.

[The prepared statement of Donald M. Perkovich follows:]

PREPARED STATEMENT OF DONALD M. PERKOVICH

Mr. Chairman and Members of the Committee: I appreciate being given the opportunity to appear here today to discuss the critical issue of improving the effectiveness of legal assistance to the elderly.

My name is Donald Perkovich and I am the Directing Attorney of the Legal Center for the Elderly of Sacramento and Yolo Counties in Northern California which is a special project of the Legal Aid Society of Sacramento County. Our organization was formed in September, 1973, under a special grant through Sacramento and Yolo Counties from their revenue sharing funds. To the best of my knowledge, we are the only legal services organization in the country funded through revenue sharing.

The Boards of Supervisors of each county agreed with the Sacramento County Legal Aid Society that the needs of the elderly were not being met through the existing legal assistance programs and that a new approach to legal representation for the elderly poor had to be initiated.

In developing the Legal Center for the Elderly, we have implemented a program that is effective and sensitive to the special needs of the elderly as a particular client group. For example, many of the aged are physically incapacitated or have transportation problems and are unable to get to a central legal aid office. We have, therefore, established a network of twenty-four neighborhood outreach centers throughout the two counties which we serve. The outreach centers are located in senior citizen centers, churches, clubs, and hospitals. Nine paralegal professionals on our staff visit these outreach centers on a regularly scheduled basis as a means of effectively reaching those persons who are in need of our services.

It has been our experience that by utilizing paralegal professionals, under the direct supervision of an attorney, in order to perform outreach work, investigation, fact gathering, and administrative advocacy, we have increased our efficiency and effectiveness. With a staff of three attorneys and nine paralegals, our office has since September, 1973, provided legal assistance in over 800 cases, which is a substantial increase from the 158 elderly cases the Legal Aid Society handled in the entire year prior to our inception.

The reason I am here today is not only to report on our project in Sacramento, but also to inform this Committee of the two main substantive legal problems we are encountering in servicing our elderly clients. The first deals with income and health maintenance, and the second with housing. The former represents 31% of our current caseload, and the latter 17%. Consequently, almost one-half of our clients have legal problems in these two areas.

The bulk of the income and health maintenance problems are related to the new Supplemental Security Income Program (SSI) which went into effect on January 1st of this year. In the Sacramento area there are still thousands of elderly citizens who have not been properly converted from the old locally administered categorical aid programs to the new SSI Program. We have a large number of clients who are still waiting for checks which were due in January. Due to administrative errors, which we have been informed will take a minimum of four to six months to correct, others have received amounts substantially less than the amounts to which they are entitled. In the meantime, our clients are without alternate sources of income and must do without many of the basic necessities of life.

There are also problems in the timely processing of initial SSI applications. SSI Alert of Sacramento County, which is funded through the Red Cross, has informed us that their organization has assisted over one thousand eligible applicants in applying for SSI benefits since January 1st and only a handful have actually received their first check.

Our office, in conjunction with Sacramento State University and SSI Alert, is currently in the process of gathering statistical data on these problems in order to empirically demonstrate to the Social Security Administration the

magnitude of the problem and the areas which require their most immediate attention. This is being done through two separate surveys. The first is a sampling of two thousand SSI beneficiaries in the Sacramento area who are having problems in receiving benefits due to errors in the conversion process. This survey is being conducted over a thirty-day period during May and June. When the results have been compiled and analyzed, we will send them to this Committee with recommendations for Congressional action.

The second survey deals with the one thousand new SSI applicants. Each applicant will be contacted in order to determine whether he has in fact received his benefits, and, if so, how long it took. We will also be able to follow up on those who are still awaiting benefits in order to accelerate the inexcusably slow process currently in practice. The results of this survey will also be forwarded to this Committee with our recommendations.

In conclusion, we respectfully request that this Committee consider the following:

A. That legal representation of the elderly be improved. This can be accomplished by recognizing their special needs; and, every legal service organization receiving federal funding should be required to establish a unit to deal specifically with the problems of the elderly in a manner which is effective in their respective communities.

B. That immediate action be taken to correct the problems that have developed in the implementation of the Supplemental Security Income Program. This is of paramount importance in this era of the rising cost of living considering that our elderly citizens are no longer able to generate alternate sources of income and are forced to adjust their standard of living to their diminishing real income.

Senator TUNNEY. Mr. Gilfix.

STATEMENT OF MICHAEL GILFIX, ATTORNEY; DIRECTOR, SENIOR CITIZENS LEGAL AID OFFICE, PALO ALTO

Mr. GILFIX. Senator Tunney, I, also, have prepared a written statement that has been submitted.

Senator TUNNEY. Yes, Mr. Gilfix, your statement is here and we will incorporate it in the record as if read.

Mr. GILFIX. Thank you.

[The prepared statement of Michael Gilfix follows:]

PREPARED STATEMENT OF MICHAEL GILFIX

This statement is intended to achieve a number of goals. First, it is to set forth the most cogent and salient reasons why free or low cost legal services for senior adults are necessitated by the practicalities and realities of life in America.

Second, by means of describing one legal aid office for senior adults that was initiated and has successfully functioned for some seven months, without funding, it is to illustrate by example some of the needs that are peculiar to senior adults and the feasibility of establishing such an office.

Third, it is to logically develop specific proposals—proposals that have their foundation in experience and reality—for the establishing of legal aid offices for senior adults.

INTRODUCTION

That there is a need for legal services cannot seriously be refuted. That this need is common to individuals of all income levels and ages also cannot be refuted.

The wealthy have never encountered difficulties in procuring competent services. The needs of lower income people have been addressed, with varying degrees of competence and success, for years by numerous programs and in many ways. The needs of the middle income individual are receiving increased attention as the movements toward greater efficiency and group services continue.

With regard to classification by age, by far the most developed are those legal needs that manifest themselves in the working adult years. Although still underdeveloped, greater attention has been paid to the special legal needs of juveniles as problems unique to this class of persons have been made known.

By far the most neglected have been the demands placed upon our legal and administrative systems by the senior citizen who, for present purposes, may be defined as any person over the age of 60. More specifically, although not necessarily so, it is the senior citizen who lives on a fixed income whose needs have gone virtually unaddressed.

Many of the needs and rights of senior adults are common to other classes and groups of the American people. It is primarily for this reason that some of them are respected to varying degrees. It must be recognized, however, that even those problems and rights that are shared by other groups are typically afforded less respect and attention when in a senior adult context. One reason, for example, is that minority groups are more coherent, more vocal and more aggressively represented. Often the senior adult progresses only as a residuary or rippling effect of rights asserted and fought for by others.¹

Even more important, however, are those needs that are peculiar to senior adults. In legal terms, these include the following:

(1) More equitable and responsive procedures to deal with those governmental agencies and bureaucracies upon which seniors are so heavily dependent;²

(2) Information and protection with regard to guardianships, involuntary commitment and nursing home care; and

(3) Wills, probate and estate planning.

It must also be emphasized that while senior adults share numerous consumer and landlord-tenant difficulties with all age groups, they constitute a class that is more vulnerable and susceptible to some particular areas of abuse. It is for all of the above reasons that the establishment of legal services that are addressed exclusively to the needs of senior adults are advisable if not imperative. In addition to the obvious need to develop a legal staff with expertise in dealing with the legal problems of senior adults, such a staff would necessarily be composed of persons sensitive and responsive to the plight of senior adults. For the first time, seniors would have legal services that are devoted to them rather than to an amorphous class of "poor" people that only incidentally number elderly individuals in their ranks. Furthermore, as more thoroughly discussed below, offices that are designed to serve senior adults would hopefully be free of many artificial and unreasonable constraints on eligibility for such services.

Because much of the following discussion relates to the Senior Citizens Legal Aid office of Palo Alto, California, some background information about that city is instructive. Palo Alto is reported to be a relatively sophisticated, relatively upper income community of some 56,000 people. Yet, as reported in a study that was completed in 1973, approximately 45% of those residents over the age of 60 had annual incomes of less than \$6,000.³ Over 21% had incomes of less than \$3,000. To give some indication of number of senior adults involved, the 1970 census revealed that there were some 5,789 senior adults in the city of Palo Alto.⁴ On the basis of that census, it is estimated that the senior adult population will increase by some 11.3% in the period from 1970 to 1980.⁵

While much of the focus of this statement is on Palo Alto, California, some national statistics that relate to senior adults (now speaking of persons aged 65 or over) will lend further perspective. In 1970, some 20 million Americans, or one out of every ten, were over 65 years of age.⁶

¹ It is at this point appropriate to give due recognition to numerous senior citizen organizations, activists and offices that have been and continue to be effective in better representing senior adults. It must, however, be recognized that a "senior adult" caucus is unheard of at political conventions or in legislative bodies, while many minorities and other groups that also suffer from discrimination do often have coherent organized subgroups within the larger bodies.

² See, e.g., "Application of *Goldberg v. Kelly* Hearing Requirements to Termination of Social Security Benefits," 26 Stan. L. Rev. 549 Feb., 1974.

³ "Study of Palo Alto Residents 60 Years or Older, 1973," Senior Coordinating Council of the Palo Alto area, 1974, p. 27. All statistics are based on interview samples.

⁴ Id., at p. 3.

⁵ Id. See "Cohort Survival Model, Users' Manual," Santa Clara County Department of Planning, March 1971.

⁶ "The Aged in America, Trial," Vol. 10, No. 2, March/April 1974, p. 11.

Presently over 20% of the nation's poor are elderly.⁷ At the same time, it has been estimated that only 6% of OEO-funded Legal Services Program clients have been over 65.⁸

As stated above, the need for legal services exists. As reflected in the above statistics, there is presently a maldistribution of free legal services to the detriment of poor senior adults, as a class. It is to this maldistribution and ways to correct it that this statement is addressed.

PALO ALTO SENIOR CITIZENS LEGAL AID OFFICE

Prior to November of 1973, the month in which the Palo Alto Senior adults legal aid office was established, it was apparent to me and a number of others in the Stanford and Palo Alto communities that legal services were not being effectively delivered to senior citizens. In attempting to rectify this situation, the idea of creating such an office was developed. An expression of interest by numerous Stanford law students and the active assistance of Mrs. Diana Steeples, Senior Adult Resources Coordinator for the City of Palo Alto, resulted in the first office hours on a Friday afternoon in mid-November. Staffed by myself as supervising attorney and three law students,⁹ the office has been open on a weekly basis ever since. It has seen an average of three to four clients per afternoon.

Workshops and resources

Prior to the Office's opening, workshops were held with individuals who have expertise in problem areas we expected to encounter. For example, sessions were held with a regional director of the Social Security Administration, with paralegal workers who specialized in administrative law from the Santa Clara County Community Legal Services, and with an individual who explained the Supplemental Security Income (SSI) program, which became effective on January 1, 1974.

The City of Palo Alto provided a room for our office and published publicity fliers. Aside from this and minimal supplies from the Stanford Legal Aid Society, we began and continue to operate the office without any funding whatever. All persons involved volunteer their time.

As the topics of workshops that were conducted indicate, it was our expectation that the greatest demand would be for assistance with administrative law issues. In fact, less than 10% of our cases have involved such issues.

A spectrum of cases has confronted us since November, with a heavy emphasis on wills and related matters. Although many problems can be satisfactorily resolved by the office personnel, we continue to be without the resources to do even the simplest of wills, even though such requests counted for 25-35% of our clients. The difficulty is that many clients could not afford the standard fee.

In an effort to satisfy this obvious need with regard to wills, we have proposed a Special Panel of local attorneys who would prepare wills for senior adults for a relatively modest fee. See Exhibit A, which is a memorandum to members of the Palo Alto Bar Association Lawyer's Reference Committee. It appears that this Panel will soon be a reality.

The Wills Panel is mentioned here only to illustrate the fact that there are countless means by which costs of legal services to senior adults can be minimized.

Understandably, many people have come in with problems that do not demand legal expertise. These cases generally amount to sitting down with a person and a sometimes massive collection of documents to help make sense of such documents and provide some direction. As will be more fully developed below, this worthwhile service could be provided by either paralegal personnel or any intelligent volunteer.

Eligibility and publicity

Because our Office is not funded by the Office of Economic Opportunity or any similar body, no rigid income guidelines were imposed upon our Office as eligibility requirements. The only strict eligibility requirement is age: 60 years is the minimum.

⁷ "Justice for a Proud Minority", Paul Nathanson, "Trial," Vol. 10, No. 2, March/April 1974, p. 12.

⁸ Id.

⁹ The three students are Jonathan Ginsburg of Washington, D.C., Keith Baldwin of Seattle, Washington, and Jim Henderson of Novato, California.

Indeed, it is fundamental to the philosophy of the Office that such guidelines, as they now exist, are arbitrary, restrictive and unworkable. The OEO poverty guidelines would and do declare ineligible countless people of all ages who lack the financial ability to obtain legal counsel. Such guidelines are particularly hard on a large number of senior adults who subsist on poverty level incomes but who own their own homes.

This point is best illustrated by a woman, 72 years of age, who came to our office seeking assistance. An 8 year illness preceding her husband's death drained their rather substantial savings. A \$1200 bill remains to be paid to the hospital that cared for her husband.

This woman lives, or more accurately, subsists, on \$260 per month social security benefits. She is unable to pay her bills and fears that her home will be taken from her. She has lived in that home for over 20 years.

Despite her impoverished standard of living resultant from her minimal income, she is not qualified to receive free legal services from the county legal aid office. The reason: her home is estimated to be worth approximately \$40,000.

Nor would she have seen a private attorney. She expressly stated that she could not afford to do so because of her limited income. The idea of selling or borrowing on her home is alien to her, unthinkable. Her home is too much of her life and cannot be tampered with.

She had written to her creditors explaining her plight but has received no responses.

Typically, she did not first come to our senior citizens' legal aid office because she was unaware of its existence. She was instead referred to us by the Senior Citizens' Resources Coordinator for the City of Palo Alto, Mrs. Diana Steeples.

In addition to the typical economic constraints that were imposed on this woman, her situation raises two other major considerations that are relevant to the providing of legal services to senior adults.

First, she was ignorant of the office's existence. Our efforts to publicize the office have been respectable but nevertheless unsatisfactory.

The unnecessarily indirect route which brought this woman to our office illustrates a further necessary objective of our or any successful senior citizens' legal aid office: the initiative must be in the hands of those providing the service. Our office has and is continuing to try to reach those senior adults who have legitimate legal needs. Unless this is effectively done, these needs will never be satisfied.

The bar has a responsibility to fulfill legitimate legal needs. It is no answer, as one private attorney has suggested to me, that no lawyer would refuse legal services to a destitute and desperate senior adult. First, this reasoning is fallacious because few senior adults would confide his or her problem to a private attorney in such circumstances for myriad reasons, an intense sense of pride being foremost among them. Secondly, and most importantly, lawyers should not be solely in the business of crisis or reactive law. Lawyers should be in the business of preventive law wherever possible.

It should be noted that the need to actively publicize is somewhat foreign to a normal legal aid office, where caseloads are excessive and clients countless. The need to publicize also arguably runs afoul of the prohibition against solicitation of clients.

Relationship with private bar

Because the office is without funding and because all services are free of charge, numerous constraints are placed upon its operation. One is that excessively time-consuming and fee generating cases must be referred to the county Lawyer's Reference Service.

On at least 3 occasions, however, individuals who needed an attorney's assistance never contacted the Reference Service. These three people did come to the Senior Citizens' Legal Aid Office but apparently would not see a private attorney. This serves (1) to seriously question the position of some private attorneys that such an office as ours takes clients from them, clients who can afford to pay an attorney, and (2) to point out the need to maintain a Senior Citizens' Legal Aid Office that is more flexible in its income eligibility requirements and that is not limited to certain kinds of cases.

PROPOSALS

The foregoing description of the inception and operation of the Palo Alto Senior Citizens Legal Aid Office was presented to illustrate a number of

propositions, all of which deserve the serious consideration of this Subcommittee. These propositions will now be presented in proposal form.

1. *Proposal:* Separate legal aid offices that are designated as "Senior Citizens Legal Offices" are needed and should be funded. Such offices demand full time staff attorneys.

Discussion: Specific designation of such an office is important. It says something to the senior adults. It tells him or her that after years of neglect, someone has recognized that senior adults have numerous unique legal needs and unique sensitivities. It tells him or her that senior adults are, in fact, valuable and deserving members of society whose needs are to be vigorously addressed. As importantly, it would serve to develop a corps of attorneys with expertise in areas that are currently underdeveloped and too often ignored.

2. *Proposal:* Senior adults should be trained as paralegal workers.

Discussion: Basically, senior adults will better understand the needs and problems of other senior adults. This would also provide a means by which qualified senior adults could find meaningful employment.

3. *Proposal:* Eligibility for such services must not be based on rigid economic criteria.

Discussion: Realistic fears that savings accounts may be depleted by a prolonged illness should be a major factor in determining eligibility, with primary emphasis placed on actual income. Similarly, non-liquid assets such as a family home should not always be negatively dispositive of a person's eligibility.

4. *Proposal:* Transportation, for both clients and legal services staff, must be provided for in a comprehensive plan.

Discussion: Many senior adults cannot pay taxi fare where public transportation is insufficient. Furthermore, many senior adults are bedridden or otherwise severely limited in their mobility. For these latter cases, transportation should be provided for staff members to go to the client.

5. *Proposal:* Such offices should be conveniently located and highly accessible.

Discussion: Wherever possible, offices should be located in or near areas with high densities of senior adults. The office should also be easy to enter and leave and should provide elevators whenever necessary.

6. *Proposal:* Exceptionally vigorous publicity must be provided for.

Discussion: Many senior adults live alone and do not frequent senior adult clubs or organizations where they might hear of legal aid offices. Such persons may have to be individually sought out.

7. *Proposal:* A concerted effort must be made to educate senior adults as to their rights under the law and their rights to legal services.

Discussion: As previously indicated, many legal rights of senior adults are but minimally exercised and understood. An additional impediment to providing free or low cost legal services to senior adults is pride, or a reluctance to accept a "hand out". As a problem rarely encountered among other age groups of the poor, it has gone unaddressed as a reason why senior adults underutilize existing free legal services.

CONCLUSION

The foregoing remarks are not primarily intended to establish that a need for legal services for America's senior adults exists. Other witnesses will have established this fact to the extent that it needs proving.

My primary purpose has been to illustrate that given a need and given the resolve to satisfy that need, all that remains is action. Inherent in this decision to act are other, attendant decisions. It involves a decision to redirect a reasonable portion of our national resources to a population segment that has too long been ignored. It involves a decision to reassert a set of values that was somehow lost in a nation that thrives on youth.

Exhibit A

MEMORANDUM

APRIL 4, 1974.

To: Lawyer's Reference Committee.

From Mike Gilfix.

Re: Senior Citizens.

The primary purpose of this memorandum is to explain the underlying basis for our belief that a special panel should be established that will provide low cost Wills.

Senior citizens are, in many ways, a finite, definable segment of our community. Today, more than any other segment, they are economically vulnerable and susceptible. In this regard, I delineate the following:

Low income that may not be so low as to qualify them for Community Legal Services

Non-liquid assets that may be the only security the individual has

A sense of isolation that results in feelings of distrust and suspicion

The factors that prevent eligible senior citizens from utilizing Community Legal Services

At least as important as the cost would be the impact of telling a senior citizen that there exists a special panel of lawyers who are not only charging them a more reasonable fee for their services, but who are by definition more sensitive to their needs as a senior citizen. This factor cannot be overstressed. Too many times we refer senior citizens to Lawyer's Reference Service for a Will and learn that they never make the call. This is not due exclusively to financial considerations.

We do not propose that there be no guidelines for the low cost Will services. Nor, do we suggest that any suggested fee be irrevocable. There must be room for a greater fee if more than a simple Will is required. In this connection, our office could draft a form that could be filled out by everyone referred to the panel. This form would extract all necessary information for the making of a simple Will.

The existence of such a panel would take minimal, if any, business from the private bar. As stressed above, there is a not insignificant feeling of distrust and isolation that prohibits many individuals from seeking out an attorney. They come to our office because it is specialized and very obviously fills a need.

Above all, I stress that a need does exist. Forty to fifty percent of the people coming into our office want advice about or assistance in drawing up a Will. We have been consistently turning these people away and are convinced that they are not going to the Lawyer's Reference Service as we suggest. Unless some of these attitudes can be changed, the bar has a responsibility to fill this need.

Mr. GILFIX. As you are aware, our Legal Aid Office for Senior Citizens is located in Palo Alto, Calif. I believe that, in itself, is significant, because Palo Alto is normally reputed to be a relatively sophisticated, relatively upper-income community. As the statistics that are contained in my statement reflect, however, there is a very high proportion of senior citizens over the age of 60 in that community. Significantly, the income level of approximately 21 percent of this group is under \$3,000 per year.

An awareness of this problem and also an awareness of the fact that the Community Legal Services in the county of Santa Clara only had office hours in the Palo Alto area one-half day per week stimulated myself and a number of others to respond to what we saw as a very great need: The providing of legal services to senior citizens in that very small area.

In so doing, I and a number of law students arranged with the city of Palo Alto to establish the Senior Citizen's Legal Aid Office of Palo Alto. This office was and is purposely located in an area that has a high density of senior citizens. The office was established and continues to operate without any funding whatever.

It is from that experience that the proposals that I have made in my statement flow.

Mr. Perkovich has addressed and very eloquently presented my views, as well, of those individuals who do qualify for free legal services pursuant to income or asset guidelines. I would therefore

like to address myself to those senior citizens who do not qualify for free legal services.

Our office has as yet imposed no income or asset requirements in the providing of services. We have relied almost exclusively on an age requirement. Of course, in the case where someone is very wealthy, we will send them to the private bar. We have taken this position primarily because of two concerns.

First, there are a number of individuals, as there are in all age classifications, who simply do not qualify for free legal services but whose income is too low to afford private legal assistance. Therefore, we felt that imposing that kind of a minimum would defeat the purpose of our program.

In addition to people with over-limit incomes, we have given services to a number of senior citizens who have sizable bank accounts. Some were between \$10,000 and \$30,000. Notwithstanding the size of their bank accounts, these individuals had very great, very obvious needs. Notwithstanding this fact, they had not sought out a private attorney. Their reasons for not doing so may be irrational, or perhaps rational. They may simply fear that the attorney is not going to be effective in their behalf or they may fear that the attorney will not be able to relate to them.

One definite cause of a reluctance to part with assets for a private attorney that is particularly demonstrable in the senior population is the exorbitant cost of medical care. For example, in an incident that I described in my statement, a very sizable bank account was wiped out due to one extended hospital stay. This is not at all uncommon in senior citizens, of course. There is a resultant feeling that one must have a big bank account to protect oneself. The alternative is the spectre of welfare or some other form of subsidization as a means of subsistence. So this was one group that would not have had legal services had we not existed.

A second major group of our clients subsist on social security and little more, but had a home, a nonliquid asset that excluded them from traditional legal services. From very detailed indepth discussion, we learned that these individuals would not part with their homes. It was that simple. We either provided them with legal services or they would have been excluded from all legal services. A number of these individuals had gone to OEO funded legal services, by the way, and had been excluded on the basis of their non-liquid asset, their home. And at the same time they refused to sell their home and, therefore, they could not go to a private attorney.

RECOMMENDATIONS

From this I have some very specific, crucial proposals, in addition to what has been said thus far.

First of all, it is glaringly obvious that the income minimum must be raised for all individuals, but particularly for senior citizens in view of the circumstances that have particular application to them.

I would also reendorse what has been said with regard to senior citizens as paralegals. Although primary reliance has been upon law students, we have had a number of senior citizens assisting us. The ability of these individuals to relate to the client, to get to the core

of the problem, and to empathize is unmatched. I also reendorse the proposition that any legal services that are provided by the Federal or State governments should contain a special unit that should be designed and trained to serve senior citizens, but I would go further. I would insist that such units be separately and specially designated as such so that the senior citizen will realize that there is somebody who is reaching out and going beyond the norm.

As a final point I emphasize the necessity for a very aggressive publicity campaign. Our office has had numerous press releases. It has been announced and described in information packets that have gone out from the city of Palo Alto and from senior citizens organizations. Every effort at publicity resulted in an immediate response of four or five clients. Then the flow would virtually stop and people would get to us in the most roundabout ways. This is largely due to isolation, because of not getting around to the more common locations where publicity might be received. Therefore, in some way I believe that it must be specified in any legislation that could flow from these hearings that sizable resources must be committed to publicity and information about legal services designed and designated for senior adults.

Thank you.

UTILIZATION OF PRIVATE BAR

Senator TUNNEY. I want to thank all of you for your testimony.

I have one question which is basic to what we have been talking about with respect to the utilization of the private bar to provide legal services to senior citizens. Can a private attorney, who is in business for the purpose of earning a living, whatever that standard may be in his mind, afford to represent senior citizens, particularly in light of the delays that you suggested, that you have with the Social Security Administration, Veterans' Administration, the fact that senior citizens are, by and large, poor, are not capable of paying the \$45 an hour or \$35 an hour that an attorney charges? Can the private bar afford to represent senior citizens?

Mr. GOLDHAMMER. Senator, I would put it this way. There are certainly some areas in which the private bar would not be able to and would not in the future be able to represent senior citizens. I think, particularly in the areas of administrative claims where you have a back benefit which has been built up over a period of time which the claimant wants to achieve, wants to obtain, but has not been awarded, you have a fund from which a private attorney can be employed. This relates to pension cases, it relates to Social Security disability cases, it relates to eligibility for old-age benefits, it relates to veterans' claims. In those particular cases where you have a fund compiled, I think the private bar has a place and probably should have a place.

Outside of those areas, as we get into problems of housing, landlord and tenant, most consumer problems, I would say no.

Senator TUNNEY. Yes?

Mr. PERKOVICH. Senator, I would like to respond to that also. I agree with Mr. Goldhammer's statement. Where there is a fund and there is a possibility of recovering a retroactive award in the Social Security areas, the pension area, or V.A. area, I agree that the private bar does have a place. Of the cases that we handled, that is not the case. We are getting an increase in somebody's benefit because

there was a mistake made or they were misclassified and it raises them from, for example, \$287 a month to \$310. There isn't much of a fund there. I agree with Mr. Goldhammer's frustration in the long delays and the long process in returning fees to the attorney on the cases.

LEGAL SERVICES ON AN OUTREACH BASIS

Also there are the transportation and language problems that the local bar has. In our community, which is a mixed community of a both rural and urban population with a large cross-section of different ethnic backgrounds, the private bar often refers cases to us because we have the ability to cover several different languages, or we have the ability to deliver legal services on an outreach basis.

Many of these people are in convalescent homes or they are incapacitated. We have 24 outreach centers in two counties, and still our paralegals have to go visit people in convalescent homes, in their homes, or in the hospitals, which is extremely inefficient for an attorney, and we have also found it to be extremely inefficient for legal services attorneys to use paralegals for this type of client contact. If a private attorney has to resort to spending time in his automobile going through rush-hour traffic or just daily heavy traffic 30 or 40 minutes each way to a client, he just isn't economically going to be able to keep his law office open. That's basically my remarks to your question.

PROPOSALS TO IMPROVE REPRESENTATION

Senator TUNNEY. I appreciate your remarks. I think both of you who have commented on the question have more experience in this area than the vast number of attorneys who have opinions. Would it be possible, in your view, for the bar associations to do more, for instance, to encourage retired attorneys to do more for senior citizens; to locate lawyer referral services in community service centers; do some pro bono work or have a program whereby lawyers contribute a certain amount of money every year as a part of their bar dues for the purpose of establishing a fund to pay attorneys who are willing to do this kind of work, compensation so they can do it; perhaps to press for legislation that would provide for Federal funding to do this; perhaps to encourage the use of paralegal technicians to do the work; or maybe prepaid legal service programs, group insurance, that kind of thing?

Our subcommittee has heard a number of different suggestions over the course of the last year, a number of which I have just mentioned, and yet there does seem to be some gap between what the private bar associations are prepared to do and what should be done to afford these services from some source to those citizens who are deprived. I just wonder if you have any thoughts on it you care to make.

Mr. PERKOVICH. I would like to respond to that very briefly. I think the solution to the problem is not going to be from one particular source. I think it is going to take a combination of all those sources. For example, with the bar association, we are trying to establish in our county a fund in the bar association for conflict cases. What happens when there are two people equally qualified for our services, who takes the other client? I think prepaid legal services will be a partial answer to the area of the middle income elderly,

not so much the elderly poor. I think it is going to take a combination of legislation, cooperation from the bar association, and some pre-paid or some socialization of the costs of legal expenses over a class of middle income people in order to solve this problem.

Senator TUNNEY. I might point out that the Los Angeles County Bar and the State Bar were invited here today and neither group has a special program for the elderly, so they declined the invitation.

Mr. GILFIX. Senator, if I could add one thing in this context. In Palo Alto our office really functions on the basis of pro bono attorneys, myself and others I have roped in from time to time. We have gone to the lawyer's reference service, just as you have suggested, for assistance in a number of areas, particularly wills. We have had a great call for wills. That is a daily event. At one point I received grudging, seriously grudging, approval of my program which was to contact attorneys who do wills. We have a special panel in Palo Alto for referrals for anybody who happens to call up who wants a will to contact these individuals who might do wills at a reduced rate. Fifteen dollars was the suggested cost. At one point they said they would endorse it and gave me their support. I drafted a letter, which was innocuous, soliciting the assistance of attorneys, and the next thing I knew I got a phone call and the support was withdrawn. The reasons, No. 1, we are taking money from the pockets of the private bar, in effect, that was said to me, and, second, we are somehow violating the State bar's rules by ourselves being a reference service. So we have experience and I can say that at times we can get their assistance, it can work, but it is no answer.

Mr. GOLDHAMMER. Senator, if I may, I would like to comment briefly on that as well.

SHOPPING FOR AN ATTORNEY

I agree with your remarks. I think one of the problems is that our bar associations do not have a sophisticated referral system, and by that I mean that if a client goes to an attorney and he is either discouraged because the first attorney tells him ignorantly or unknowingly that his case is worthless or quotes him too high a fee, the client gives up, when so often there are other members of the bar, particularly as we get into poverty areas and senior citizen areas, who will take cases on reduced rates, will take oddball suits, will take contingent matters—cases where many attorneys would charge a fee—we will take on a contingency basis. The bar associations have no system for redirecting the clients. I recognize the ethical problems in that kind of redirection, but it seems to me that something could be done to provide a better system of allowing the public to attorney-shop.

Senator TUNNEY. I agree that we need a better system to allow the client to shop for attorneys. I am also very conscious of the fact that when we are talking about a claim such as Mrs. Garcia had. Mrs. Garcia is not a rich woman. I mean she could shop for attorneys from now to kingdom come and she's not going to get one for the price that she can afford, which is zero. There have to be mechanisms developed in addition to the Federal program of legal aid, California

Rural Legal Services, neighborhood legal services, which are essentially welfare type programs. There have to be programs to provide legal services to people who are in the economic condition of Mrs. Garcia without making them welfare recipients. I think the bar has a responsibility here, and I might add, as a member of the bar myself, I do not think we have met those responsibilities well. One of the reasons we are holding these hearings here today is to develop as extensive a record as possible so when we talk about a legislative remedy we will be able to meet that challenge, but also we are trying to encourage the bar to think about it. Just by raising the issue, by inviting the Los Angeles bar, by inviting the State bar, and the fact that they didn't come must indicate that they have not had this subject in the forefront of their minds for a long enough period of time in order to be responsive.

TIME IS RUNNING OUT

But the time is running out; I am talking now as a lawyer. If we don't do something quickly to be more responsive to the people of this country, not just senior citizens but I am talking about middle income people who can't afford a lawyer either; they are hocked up to their eyeballs with payments and just can't afford \$45 an hour legal services. If we don't do something to provide better legal services to the people of this country, we are going to find that our great profession is no longer going to be as free from Government control in the future as it has been in the past. And the reason is that there are going to be Congressmen, Senators, and State legislators who will get elected by promising legal care, whatever it might be, in some form like Medicare, where the lawyer is forced to provide services and forced to do it for a fixed, low price. I don't want to see that time come; I know that you don't. Then, we have to develop mechanisms to provide the legal services so we don't have that kind of governmental intervention, and the quicker the better.

The use of paralegal technicians is a good example. That is a way of being able to start to meet the demand, because you don't have to pay paralegal technicians as much.

I also happen to feel that one of the important things is that then you have an expert who, for instance, is accustomed to handling veterans' cases and Social Security cases and such. He can identify a problem and solve it in much less time than a general practitioner, and perhaps 10 percent of the time because he just knows what to look for as an expert. Therefore, even in a semiprivate practice, group practice, perhaps prepaid group practice, you would be able to provide those services for much less cost than the private practitioner who has to go to the code to look it up, then familiarize himself with the administrative procedures that he may not be familiar with and, thereby, spend a lot more time. In the case of lawyers, your very inefficiency rewards you because you spend longer looking up the books and finding out what the law is and you get paid by the hour. That's a heck of a note.

I want to thank you very much, gentlemen.

I would like to call to the witness stand Michael Burk, legislative advocate, National League of Senior Citizens; Robert Forst, executive director of the National League of Senior Citizens; Joseph Berks, member, National Retired Teachers Association;

and Ted Ellsworth, member, National Council of Senior Citizens. This will be a panel of national aging organizations.

Gentlemen, the time proscription that we announced earlier for the other witnesses is still operative. I know that any one of you could talk for hours on the problems of senior citizens and legal representation, because you are familiar with the subject matter and the need, but I would appreciate your staying within the time limit of 10 minutes. It would, of course, help if you could focus on legal representation of senior citizens, but I understand that you probably in some instances go beyond that narrow field of study.

STATEMENT OF MICHAEL BURK, LEGISLATIVE ADVOCATE, NATIONAL LEAGUE OF SENIOR CITIZENS; LOS ANGELES COUNCIL OF AGING

Mr. BURK. I am Mike Burk, the legislative advocate for the National League of Senior Citizens, and I have with me Mr. Robert Forst, who is the executive director of the league and the editor of the Sentinel, the newspaper for the elderly.

In the interest of time, Senator, I will not read the whole presentation and we will have time for questions, perhaps, afterwards.

Let me start with this, that most of the problems of the elderly could be mitigated, if not solved, by just one thing, sufficient income. But since the foreseeable future offers no hope that such income will be forthcoming, we should then seek those more immediate avenues by which a too indifferent society may alleviate the problems our older Americans have.

One of these avenues is certainly the topic of our present discussion, bringing legal services to the aged poor.

There is hardly any facet of the lives of our elderly that may not be touched and helped by legal representation. Every large city presents a host of landlord-tenant and other consumer problems that are endured helplessly by people too physically infirm, too psychologically cowed, or simply too poor to bring meaningful action in their own behalf.

This same problem exists in the same way in the medical field. Too often the elderly poor are victims of unnecessary medical procedures and other malpractice, as well as overcharges and intimidation by doctors, nurses, and hospitals that may be all too aware that their victims are helpless and friendless, and, of course, the difficulty of obtaining medical help in the first place.

The list could be made infinitely longer, and most of it is obvious, so let me touch here on two other facts that relate to the elderly and their not-so-obvious need for legal services. One is the fact that, while there is some protective defense offered by society to nearly everyone, one of the rights the elderly are forced to give up is the right to sue. If a poor and aged person's rights are abridged in some way, or if such a person becomes a victim of some circumstance requiring legal redress, how does such a person hire an attorney for representation when no funds are available for this service? Too many of our older people lack even the dime for the phone call to an attorney.

As an instance here I will offer the recent case of a woman I know personally. She is nearing the age of 70 and is living on the Federal Social Security Income with the California State supplement. She is bright, alert, and in excellent physical condition for her age, or was before her recent accident. She was standing on one of the steps of a down escalator in one of the largest department stores in Los Angeles when some children, running down the escalator, knocked her down. She was severely injured in this fall on the store escalator and is told by her doctor that she will have to wear a surgical corset for the rest of her life. She has not been able to secure a settlement for any kind from the store or from the store's insurance company, not even for the doctor or medicine or related costs, to say nothing of damages. The store says it is not the fault of the store she was injured, but the fault of the children who knocked her down. Any recovery, the store says, must come from the parents of these children. Of course, the children ran from the scene and the elderly victim has no way of finding out who they might be, no way of bringing suit against their parents if she could find out, and no way to bring suit against the store because she is without the necessary funds, alone and helpless in the face of these adverse circumstances. Certainly legal representation is what this woman needs.

COUNSELING SERVICE FOR THE ELDERLY

Second, I will offer another vulnerable area in the life of the elderly from my personal knowledge. The National League of Senior Citizens, a nonprofit organization I am representing here today, has from its inception 33 years ago maintained a service for its members that is called simply a counseling service. The work done by this department of the league goes far beyond mere counseling, for over the years hundreds of elderly people, members of the league, have been represented by the staff of this department in hearings and in legal actions to initiate, to recover or to maximize cash or other grants or services available from the county, the State, and the Federal Government. The amounts in dollar return to these elderly went above the million-dollar mark some years ago.

Now, if you will visualize the extension of this service from just our league members to all the elderly poor, you may realize how important this legal service may be and what an important help in the lives of our older Americans it could be.

Of all the ancillary services that our society might offer our senior citizens, there is none that would reach an area more void of help right now. While some headway has been made in this field by organizations now operative, the extent of the need is far beyond their limited means of help.

A department of the Federal Government, or some agency with equal power and with services available throughout the Nation, can only bring a maximum solution to the problem, and the National League of Senior Citizens supports a proposal to bring such an agency into existence.

I might add one other thing here, Senator, that it has always appalled me in any confrontation with the bureaucracy of our Nation that a citizen, for instance, an aged person trying to get Social Secu-

ity retirement benefits, should be forced to hire a private attorney to get something which the Government supposedly should be willing to furnish him. I don't understand why this is so, but it is so, and it is merely another area in which I think the very thing that we are talking about here, bringing legal services to the elderly poor, could fill a void as some of the people before me have testified exists. I can think of very few things that would be more helpful than this very thing.

BUREAUCRATIC ATTITUDES

Senator TUNNEY. Thank you very much.

Of course, as you know, there is a problem endemic to all bureaucracies that once a certain type of person gets into a civil service position, he or she feels that somehow he is doing a favor to the person coming in to receive a service which the law entitles them to, and which the person who is on the civil service payroll is being paid to administer. Now, as I say, I don't think this is representative of the attitude of the majority of people who are working for the Social Security Administration or working in the Federal bureaucracy or State bureaucracy, but there are, you know, some bad apples in every bushel.

Mr. BURK. It isn't just the bad apples, Senator, it is the whole process. The whole thing needs to be overhauled. I can't think why I, who will be eligible for retirement in a few years, should have to hire an attorney to get my rights to something I have spent my whole life accumulating. I don't understand this.

Senator TUNNEY. I agree with your proposition that you don't understand why you have to do it, but, on the other hand, let's say that there is a controversy and a legitimate controversy between a senior citizen and the Social Security Administration as to the amount of compensation to which that person is entitled. It seems to me that if that legitimate controversy does exist and if a lawyer is needed, there ought to be a lawyer available to a senior citizen who is impoverished to pursue that senior citizen's rights and insure that those rights are recognized by the appropriate forum without throwing that person into bankruptcy or making him a charity case.

Mr. BURK. I couldn't agree more. My point is this, how come a private attorney can get more from the Social Security Department than I or any private citizen can? If he can do it, obviously the client was entitled to it, then obviously the Social Security Department should have given it to him in the first place. That's my point.

Senator TUNNEY. If we had a better attitude on the part of people who are in the front line of administering these programs for the aged, a feeling that they were there to be of service, rather than to bestow some privilege, I would say that we'd be better off. You can't imagine the number of people who are writing to my office every week, literally tons of letters in the course of a year, who are having trouble with the Veterans' Administration and Social Security Administration. The trouble they are having is that the people they are dealing with at that front line of encounter are treating them as though they were trying to raid the Federal Treasury; that the agency staffers are bestowing a privilege on people who are simply asking for the rights that they are entitled to by the law.

Mr. BURK. What we'd better do is reshuffle the front line.

Go ahead, Bob.

STATEMENT OF ROBERT FORST, EXECUTIVE DIRECTOR, NATIONAL LEAGUE OF SENIOR CITIZENS, LOS ANGELES COUNCIL ON AGING

Mr. FORST. Senator Tunney, members of the committee, my name is Robert Forst. I am the executive director of the National League of Senior Citizens and I am the vice chairman of the Los Angeles Council on Aging. I have a few brief remarks that I would like to make.

I think we have graphically heard today that there is a need for legal services for senior citizens.

Five thousand years ago a tablet came down from a mountain on which was written, "Honor thy father and mother." Two hundred years ago we decreed that people have inalienable rights. Thirty years ago we enacted in this country Social Security. Ten years ago we realized the right of the aged to medical care, and thus we enacted Medicare. Two years ago we realized that Social Security was not doing the job and thus we enacted in this country a guaranteed annual income for senior citizens, albeit far too low.

The point that I am trying to make is that we are past the stage of talk; we are at a stage where the aged in this country do have the right to legal services. It is said that the wheels of justice grind exceedingly slow. The wheels of justice in the case of the senior citizen in his right to get justice, to have justice, grind even more slowly.

I think we have heard talk that demonstrates the need. I am sure that your meetings throughout the country have demonstrated that need. I implore Congress to enact legislation that will enable our senior citizens to have the right to which they are justifiably entitled, the right to legal counsel.

Thank you.

Senator TUNNEY. Thank you very much.

STATEMENT OF JOSEPH BERKS, LEGISLATIVE COMMITTEE, NATIONAL RETIRED TEACHERS ASSOCIATION/AMERICAN ASSOCIATION OF RETIRED PERSONS

Mr. BERKS. Senator Tunney, I shall now speak upon something that touches a raw nerve in all of us, taxes.

My name is Joseph Berks. I am a member of the Joint State Legislative Committee of the National Association of Retired Persons and the National Retired Teachers Association. We represent in the United States over 7½ million members. We have close to 800,000 members in the State of California.

I am an attorney. I was admitted to the bar in Philadelphia in 1925, so I think that qualifies me as a senior citizen. I moved to California in 1971 when I retired, and finding retirement a little irksome, I took a job as a taxpayer service representative with the Internal Revenue Service. In that position I think I have probably seen more senior taxpayers than the ordinary tax preparer sees in many years and I am familiar with the problems of the senior taxpayer.

Let us ask, who is the senior taxpayer? First of all, he is a minority. He only represents 41 percent of his own age group. He is a low-

income taxpayer, because of the 6.7 million returns filed by those over 65, by an Internal Revenue survey, 57 percent of those returns were filed by people having an adjusted gross income of less than \$5,000, and 79 percent of those who filed had an adjusted gross income of less than \$10,000. He is also, as a whole, not as well educated as the average, because in his generation he did not have the benefit of the educational opportunities, so therefore only about 28 percent of his generation has had a high school education.

When a person reaches 65, he is confronted with an entirely new situation so far as his taxes are concerned. Wages and salaries which are the easiest types of income to report no longer have much significance for him. His income now depends on pensions, annuities, capital gains, interest, dividends, rental income, royalties, all of which are difficult to compute, requiring the filling out of complicated schedules and after these schedules are filled out they transfer them to the Form 1040 and the computation of what tax is due.

Being limited in his education and being harassed by the decrements of old age, impairment of hearing, eyesight, lack of mental capacities, the task becomes more and more difficult to him. So it is no wonder that a survey taken by the Internal Revenue Service showed that about 80 percent of the aged taxpayer goes for outside assistance in computing and filing his tax returns. And because of the fact that his tax return is a more complicated tax return than the ordinary citizen, he is charged a higher fee for the preparing of his return than the ordinary citizen. I have been told that the average for this year was about \$16 a return. It was not unusual for me to hear people say that they had to pay \$40, \$60, and in many cases over \$100 for the preparation of returns.

INCOME TAX PREPARATION FOR SENIORS

I would say that an attorney or an accountant who would prepare a tax return for a senior citizen who had income to report from the sale of securities, a pension to report, a retirement income credit to make out, would be justified, considering the time and computation needed, in charging a minimum fee of at least \$100 to prepare such a return. I think it is a shame that these people should have to pay that. It is a charge against those whose income is low and who can ill afford to pay it. It almost amounts to a surcharge, a tax against them.

In order to claim the benefits that Congress has given to the aged in his taxes, let me take you through some of the steps that he must go through. If he wants the retirement income credit, he must complete a schedule R, which is a complicated return. We have provided the committee with a written statement and we have gone through the steps required to compute a retirement income credit. It is so complex that I am sorry to say that many people in the Internal Revenue Service can't complete it.

If he sells his property and he wants to take the benefit of the \$20,000 exclusion from income taxes of the sale price, he must file a schedule 2119, transfer any capital gains that he has to a schedule D, then transfer it to the back of the Form 1040, compute his tax, and then go it from there.

If he has a pension or an annuity due him and he wants to claim the benefit of the tax exclusion for the cost of the annuity to him, he must complete a schedule E, and he must compute the exclusion by using actuarial tables, which, in many cases, are not even available to him. The only place he can get them is from a financial journal or an insurance digest, or by going to the Internal Revenue office and asking them for the actuarial tables, and I will guarantee you that 90 percent of them won't understand those actuarial tables. Many people in the I.R.S. don't understand them.

If he has a distribution of a pension—when many people retire they have savings funds and profit-sharing plans and when they retire the amounts are distributed to them in a lump sum and in some cases these contributions come to a sizable sum—many of them do not know that there is a provision in the law which enables them to take these lump sum distributions and average them out over a 7-year period.

There is a form given to the taxpayer to compute this reduction in taxes, and I might read you something about this income averaging.

Senator. I would like to pass this down to you, sir, to show you the form of computations that must be undertaken by a taxpayer who wishes to get a benefit for the distribution of the pension fund to him. I would say that 90 percent of them will never be able to complete that form.

Senator TUNNEY. Oh, I would agree with you.

Mr. BERKS. It is the kind of form that even makes a Philadelphia lawyer flinch.

Senator TUNNEY. If this were an examination that you were giving me and I had to do this thing in the next 3 hours in order to get an A, and I was supposed to get it right, I have a feeling just from looking at this thing that I have all the qualifications for F work. No, it is a very difficult form.

Mr. BERKS. No question of it, sir. Many of the forms for the aged taxpayer are just as difficult.

50 PERCENT OVERPAYING TAXES ON ANNUITIES

The result has been that surveys have been taken that shows that the average taxpayer either has to pay an exorbitant amount due to his income to get these taxes returned for him or he overpays. A survey taken in 1965 by the Internal Revenue Service of those who were reporting incomes from pensions and annuities showed that about 76 percent of them were reporting their pensions and annuities incorrectly and about 50 percent were overpaying.

Senator TUNNEY. Fifty percent were overpaying?

Mr. BERKS. Fifty percent were overpaying. And a survey was taken by our association in a tax aid program of 75 taxpayers who were called in by trained people, tax aides, and we examined their prior year returns and we found the same ratio running, too, about 75 percent were overpaying their taxes, and it is very easy to overpay your taxes.

If you want to compute your retirement income credit, and it is estimated that about 35 to 40 percent of those who are entitled to the

retirement income credit do not claim it or claim it incorrectly, and if a new bill before the Congress at the present time increasing the retirement income credit and extending the provisions of it goes into effect, I assure you that many more people who are entitled to this credit will never get it.

Another place where taxes were overpaid and continue to be overpaid is on retirement disability. Many people are retired by their firms or by a government agency because they are disabled, cannot work, and they receive payments. The Internal Revenue Service has ruled up to the present time that any of these payments received are sick pay until you reach the minimum retirement age. At that time it becomes a pension and becomes totally taxable. A sick pay, of course, gives the right to a sick pay exclusion of up to \$100 a week.

In April of this year, prodded by some court decisions contrary to that ruling by the Internal Revenue Service, they have changed their ruling and they now say that anyone on disability retirement may claim the payments they receive as sick pay until they reach the mandatory retirement age which, in many cases, is 10, 15 or 20 years beyond the retirement age which is voluntary. They also made this ruling retroactive, which means that those who will file amended returns may get back as much as 3 years overpayment.

I predict that unless prodigious efforts are made to acquaint the general public, and particularly this class of taxpayer, as to the change in that ruling, that many thousands are going to continue to pay their taxes in the same fashion and overpay, and there will be millions of dollars due taxpayers in refunds that will never be paid to them because they don't claim it.

TAX AID PROGRAM

We have gone over the complexity of the tax reporting for senior citizens and the expense it is to many. Now we have to find a remedy for it. About 3 years ago our association, together with other associations for senior citizens, instituted a tax aid program. This program recruited dedicated senior citizens who volunteered to be trained by the Internal Revenue Service to help senior taxpayers in preparing their returns. In the 3 years it has been in operation the system has worked very well and it has grown.

In 1973 the tax aid program trained 3,500 persons and provided services in 800 cities of the United States, and prepared returns for over 200,000 aged taxpayers. The senior aides in the tax aid program is operated in cooperation with the Internal Revenue Service, and I must give the Internal Revenue Service its due. In this particular program it has provided excellent training materials, it has provided volunteer instructors from its body of revenue agents and auditors who do give good instructions, but, unfortunately, they instruct for 1 week, somewhere around 12 to 16 hours, and in that particular time they can only teach these aides the very fundamentals of tax reporting.

In order to clear up the problem of the senior taxpayers tax reporting it has been suggested that the Internal Revenue Service make out returns. We don't think that that is the route that should be taken. It would require the additional services of many, many

more personnel with the I.R.S. office. We also feel from the experience of our senior tax aides that the average senior taxpayer feels more at home with another senior counsellor who is wise in the tax laws. He feels that because he is a volunteer and does not have any connection with, let us say, the establishment, that he can talk over his problems with him, that he is more able to see his side of the problem, and not only that, this is an outreach program. This takes the tax preparer into areas close to where the taxpayer lives.

OLDER AMERICANS TAX COUNSELING ASSISTANCE ACT

In San Diego County where I live you must come, in some instances, 40 to 50 miles to the I.R.S. office. And when you do get there you find long lines, long waits, and the service assistant cannot give you much attention, he can only tell you how to fill out your return. He cannot take the time or will not take the time to prepare the return for you. We feel at the present time that an effort should be made to pass the Older Americans Tax Assistance Act. I believe it is Senate bill 2268.

Senator TUNNEY. S. 2868.

Mr. BERKS. S. 2868. This bill would provide for additional revenue, additional appropriations to the Internal Revenue Service.

We suggest that the Internal Revenue Service have permanent personnel who will initiate a system of tax aid, that they will work in close cooperation with the senior citizens group who recruit and get the volunteers to carry out this program. We ask that the Internal Revenue Service have their training materials ready by October. We want them to give a longer training period, at least 3 weeks, to these volunteers. And I might say now, sir, that there is a tremendous reservoir of talented people, seniors, on the outside who are dedicated. I know; I taught one of those classes, and as the young people say, they are beautiful, they are bright, they are dedicated.

The volunteers should be particularly trained to look out for the problems of the aged taxpayer's return. He should be prepared and taught how to make them out properly and, most important of all, we feel that he should be paid for his out-of-pocket expenses, at least for his transportation and his lunches, and if that is done we will get more volunteers.

Thank you very much, Senator.

Senator TUNNEY. Thank you very much. I just point out that you know the Older Americans Tax Counseling Assistance Act has 52 cosponsors in the Senate. I am one of the cosponsors. I am hoping that we will be able to get the bill through within the next 2 or 3 months.

Mr. BERKS. I am sure it will.

Senator TUNNEY. Mr. Ellsworth.

STATEMENT OF TED ELLSWORTH, ADMINISTRATOR, PUBLIC PROGRAMS, INSTITUTE OF INDUSTRIAL RELATIONS, U.C.L.A.; CHAIRMAN, OLDER AMERICANS SOCIAL ACTION COUNCIL, LOS ANGELES COUNCIL ON AGING

Mr. ELLSWORTH. I am Ted Ellsworth. Administrator of Public Programs in the Institute of Industrial Relations at U.C.L.A. I

submitted a statement that indicates my experience in the field of aging on the Federal, State and local level.

Senator TUNNEY. It will be included in the record as if read and if you could summarize it.

[The prepared statement referred to follows:]

PREPARED STATEMENT OF TED ELLSWORTH, ADMINISTRATOR, LABOR AND PUBLIC PROGRAMS, INSTITUTE OF INDUSTRIAL RELATIONS, UNIVERSITY OF CALIFORNIA, LOS ANGELES

My name is Ted Ellsworth. For the past fifteen years I have been active in many public and private programs dealing with the problems of the aging. I was first appointed by the Los Angeles County Board of Supervisors in the early Sixties as a member of the Los Angeles County Committee on Affairs of the Aging and am now serving a second term as its president. I also have served on the California Commission on Aging, as Special Consultant on Aging to the House of Representatives Committee on Labor and Education and as Consultant to the Administration on Aging in Washington, D.C. I am also a member of the newly formed Council on Aging of the City of Los Angeles.

In the private sector I serve as Chairman of the Older Americans' Social Action Council and as a member of the Los Angeles County Federation of Labor Senior Activities Committee.

I mention these items not to try and establish myself as an expert but to let you know that I have had considerable exposure to the problems of aging and retirement at all levels—including my personal problems which seem to be increasing daily.

I am sure that some of the other speakers today will deal with more factual and specific problems, but I would like to relate some impressions gained from many meetings and pre-retirement planning seminars that I have attended and conducted over the past fifteen years.

I might sum up the problems as did one little old lady at a hearing held in Wheeling, West Virginia, while we were gathering testimony which led to the Older Americans Act. After being sworn in she stated simply that she needed more money and that her pension was \$50.00 a month and her rent for one dingy room was \$37.00. With that our best witness ended her testimony.

Certainly it is true that more income, higher social security payments, and better private pensions would solve many of our problems, but by no means all of them. One such problem that might be partially but not completely solved is that of legal services.

The aged are in double jeopardy when it comes to getting legal services. First, a very high percentage are poor and can't afford legal services—second, they are many times insecure and afraid to approach an attorney. Sometimes this is because of fear of reprisal. A common case is fear of taking legal action against a landlord because of fear of being thrown out on the street.

Just last year for example we had one union retiree club whose members felt that they were being discriminated against by the trustees of their industry pension plan. One brave member contacted a poverty law center organization, but when he tried to get other members to join him he was unsuccessful. The reason—many thought they would lose their pensions if they took legal action.

In the case of the minority aged, we might say that they face triple jeopardy. A survey that we did at U.C.L.A. in 1969 indicated clearly that the low income, the elderly, and minorities all of which probably have the greatest need for legal services use them the least—indeed, a high percentage feel that they have no need for legal services.

Just let me point out a few items from this survey. The membership of three employee organizations were sent questionnaires. They were the Southern California Professional Engineers Association (mostly McDonnell-Douglas employees), the Motion Picture Costumers, I.A.T.S.E., Local No. 705, AFL-CIO, and the Laundry & Dry Cleaning Workers, Local No. 52, AFL-CIO.

The Engineers are predominantly a young, white, male, middle income group. The Costumers are mixed male and female—mostly white and range from high to low middle income and from very young to very old; and the Laundry Workers are mostly minorities, a high percentage of women, and almost all in the lower income brackets.

Following are answers to some questions concerning use, need, and recognition of need for legal advice:

	Engineers	Costumers	Laundry
1. Percentage that responded that they had not used the services of an attorney during the previous year in any of over 30 listed categories.....	36.2	40.8	82.1
Needed services but didn't use an attorney.....	41.5	23.8	14.3
2. Failure to use attorney had an adverse affect.....	43.6	19	-----
3. Reason for not using attorney:			
Too expensive.....	25	23.8	14.3
Used public agency.....	2.6	5	None
4. Felt that there was a need for their organization to make legal services available to members.....	88.5	66.7	60.7
5. Most important area of need for legal services:			
Felonies.....	5.9	10	46.4
Misdemeanors.....	-----	16	10.7
Civil.....	67.6	38.7	10.7
6. Number of special categories of need mentioned.....	7	2	1

Note.—Engineers mentioned consumer fraud, auto insurance, and auto accidents—Laundry workers mentioned only unemployment insurance.

Ethnic Group	Number	Percent of staff
Caucasian.....	23	27
Black.....	27	30
Mexican-American.....	26	29
Oriental.....	12	14

From these answers it can readily be seen that the lowest income group used fewer legal services, felt a lesser need, and certainly failed to recognize a need for legal services. For example, among the items mentioned in item (1) above a number of services were mentioned such as wage garnishment, collection of money, credit problems, and similar problems which we know are special problems for the poor and minorities. Yet not a single Laundry Worker had used or felt a need for legal services when faced with such problems.

It is interesting to note that two areas of awareness of the need for legal advice for laundry workers were workmen's compensation and unemployment insurance. In both cases the union constantly alerts its members to a legal service for these items that is available through the union.

In summary this survey showed a decreasing awareness of need related to the number of aged, minorities, and low income in the groups.

In 1967 the Los Angeles County Federation of Labor, AFL-CIO, with a grant from the Administration on Aging and in cooperation with our organization conducted a survey through interviews with 1200 retired union members in a variety of categories. One question was asked as to what counselling services would be most useful if the Federation would establish a counselling center. Except for Social Security and Medicare which are day by day problems, legal services were most often mentioned—39.4%, certainly a high enough percentage to indicate the need.

The figures bear out what we have seen in many pre-retirement planning seminars that we have conducted. The largest attendance and the most questions are always asked at the session on legal problems. An amazing number have questions about wills, probate, inheritance taxes and related matters—and usually we find that these persons have had no legal advice regarding wills—some have purchased standard wills at a store—others have handwritten wills. Usually the reason given for not seeking legal advice is that they are afraid that the legal fees will be more than their estate is worth.

While legal fees may be high, it is alarming to hear these participants tell about these transactions—and others—such as selling their homes—in which they have blindly proceeded without legal or other professional advice.

The problem of the aged is that often they fall between the cracks, having not enough money to pay for legal services and too much to secure free services.

We see two possible approaches that would help solve this problem.

(1) Para-legal services—easily accessible and readily available to all retirees. Recently at the Los Angeles County Department of Senior Citizens' Affairs about 50 retirees were trained to furnish para-legal services. The

trainees have been almost completely idle. I am told that the main reason is that the income allowable to receive such services must be under \$187.00 per month.

(2) One or more senior ombudsmen where seniors can go and have the way paved for them when they need legal services by a person in whom they have confidence. We have often been told by seniors that they rejected legal services the minute they walked in an attorney's lush office. They immediately pictured excessive fees. The wonder and majesty of it all was too much.

Finally, of course, we need federal legislation that will provide funds for the continuation and expansion of the senior law centers that now exist. I am sure that Mr. Nathanson and others will testify more fully regarding this.

MR. ELLSWORTH. I just want to merely emphasize some of the things that have already been said by other speakers, because my statement parallels a good deal of what Mr. Fletcher said.

FEAR OF REPRISAL

First of all, I want to emphasize a couple of barriers. The fear of reprisal, for example, is especially bad for the older people because they are in double jeopardy and when you are old you are in triple jeopardy.

We find that renters have problems with their landlords and are afraid to discuss them for fear of being thrown out in the street. We have many instances of this. In the field of pensions we find that especially with industrial pensions where there is a union-management pension individuals are afraid to proceed with their pension protest because they are afraid they may lose some benefits. Just last year a man came to my office who had what I considered a very legitimate protest against the actions of the trustees of his industry fund. I recommended he go to the National Senior Citizens Law Center, which he did. They thought he had a fairly good case but wanted more information. When he went back and tried to get other people who had urged him to go to the center to support him, they had been either told or thought they had been told by their union and management representatives that this wouldn't help them any, and that they might lose benefits.

Several years ago I had an example at one of the retirement villages with a very bad medical plan where I was retained to investigate it, and, believe me, it was awfully bad. But when the time came for the people to testify and to sign complaints, we had one devil of a time getting anybody to do it. This is because of insecurity.

The fear of cost has already been mentioned but I just want to add one thing, and that is even where the cost is not too great, older people are afraid to go to some of the offices where they have been referred. I have had people come in and tell me, "The minute I walked in that office I walked out again because I knew I couldn't afford the fees. I didn't even wait."

Another thing I think that has to be emphasized is that we need more decentralization. Older people can't travel. We have the National Senior Citizens Law Center here, but that is of very little value to the poor person living in Pacoima 30 or 40 miles away. One good development in Los Angeles County is that the county administrative office and the board of supervisors are undertaking a decentralization program and setting up service centers in each of the

supervisory areas so that there can be a better neighborhood atmosphere.

I want to mention a third thing, and that is the lack of knowledge of older and poor people that they have a need for legal advice. I think this is the biggest barrier and one that perhaps some of the organizations really should start working on. We had recently two conferences in regard to prepaid legal care. In one of them we made a survey of what the legal problems of union members happened to be. We selected three unions: one, engineers, predominantly white male, middle income, well educated; a second one the laundry workers, low income, predominantly female, predominantly minorities, and poorly educated; and then we took a third group, the motion picture union that had a mixed group. The types of questions we asked were some of those that Mr. Fletcher mentioned, the services that he is involved with, consumer fraud, and this sort of thing. One of the interesting things was that 82.1 percent of the laundry workers didn't feel that they had a legal problem in the past year. Now, we know that their wages were garnished, we know they had credit problems, we know they had consumer problems. On the other hand, the engineers, only 36.2 percent of them thought they had no legal problems.

The survey is gone into in some more detail in your report, some summary of it, but what it indicated throughout was that the engineers had legal problems, they knew how to handle them, they feared the cost less. The laundry workers felt they didn't have them, didn't use them, and they didn't know how to get them, and I think this is typical of the entire field.

PREPAID LEGAL CARE

One other thing I want to mention, and we have had some discussion here about prepaid legal care, we have done quite a bit of work in this field. While I think and I hope that it develops properly, the development in prepaid legal care at the present time is not one of encouragement to do anything for older people. There are a few unions that have negotiated money for a prepaid legal care program, there are a few that have made arrangements. But one thing that is developing that I think is unhealthy is that some of the lawyers who in other areas are described as ambulance chasers are approaching groups with low fees and then they develop overutilization, high court costs, and other things. In other words, they are using the prepaid legal care as a gimmick.

It seems to me there are two things we have to do. One is to make legal care more accessible, as I mentioned, through neighborhoods, through other means, and a second one is perhaps to develop some kind of a system that we might call an ombudsman system of organizations such as Mr. Fletcher represented, because older people are afraid to go, they like their way paved for them. I am sure that somebody going to Mr. Fletcher's office, getting some help, will then be better able to approach the attorney, if that's where they have to go.

Finally, of course, and I am sure that Mr. Nathanson will talk about the need for improving the national legal services and that

sort of thing. Money must be available for them, and, of course, we recommend that very highly, too.

Thank you.

Senator TUNNEY. Are you suggesting that we would have legal services made available to senior citizens as part of a package of services that are available to community centers? If so, do you think that could be done under the Older Americans Assistance Act or some other funding mechanism, or do you think we should look toward providing legal services separately as a service which would have separate funding, or some combination of both?

Mr. ELLSWORTH. I think probably a combination of both. The thing that I feel would work best would be to have paralegal services available, for example, in Los Angeles in each of the five supervisorial districts, and it may be there are only four set up at the present time. There the service centers provide service and information on all of the county departments, probation, welfare, aging, veterans, and the rest of them. If that could be expanded to include the legal, I think that is the best way to do it there. And, of course, I think we have to have Federal funding.

As far as the paralegal services go in Los Angeles County, we did train at the County Committee on Aging, along with the Center for Law and Poverty, some 50 people. My understanding is that the program is almost ineffective because the income limit, as I understand it, is set at \$187.50 per month, which excludes anybody who has enough money to pay for legal services.

Mr. FORST. I might add to that, Senator, that the Social Security payments are more than that right now, as an average.

Senator TUNNEY. That's right.

Thank you very much, gentlemen. We really appreciate your being with us. Yours has been very valuable testimony to the committee.

Our next witnesses, a panel of government officials, Mrs. Carnella Barnes and Mr. Matt Woods. Mrs. Carnella Barnes is assistant director, Department of Senior Citizens Affairs, Los Angeles County. Mr. Woods is District Director, Social Security Administration, downtown Los Angeles office.

Mrs. Barnes, do you want to proceed?

STATEMENT OF CARNELLA BARNES, ASSISTANT DIRECTOR, DEPARTMENT OF SENIOR CITIZENS AFFAIRS, LOS ANGELES COUNTY

Mrs. BARNES. Senator Tunney, members of the U.S. Senate Special Committee on Aging, Ladies and Gentlemen:

I am here today representing the county of Los Angeles, Department of Senior Citizens Affairs, in the capacity of assistant director.

We are pleased to be asked to speak in behalf of the elderly today, explaining their needs in the area of legal services. We are aware of your deep concern and commitment to the dignity and worth of the aging population, which you have demonstrated by hearings that you have conducted in preparation for meaningful legislation.

I would like to reiterate further some of the legal barriers to older persons receiving legal services in the county of Los Angeles.

The first major barrier is knowledge of a legal resource which is

sympathetic to their problems, a professional service which has the time to listen and to help unravel the problems of an older person who no longer remembers the details nor remembers where the records are, if they are still available.

The cost of legal services is well beyond the income capability of most aged persons in Los Angeles County, 15 percent of whom live below the federally defined poverty level, and an additional 14 percent of whom have an income just above the poverty level.

I would like to move to the question of how title III of the Older Americans Act might be used to provide legal services. You are familiar with Title 45, Chapter IX, Administration on Aging, Department of Health, Education, and Welfare, Section 903.66 b.11, which states, and I quote:

Where necessary and feasible, enter into arrangements, consistent with the provisions of the area plan, under which funds under this title may be used to provide legal services to older persons in the planning and service area, carried out through federally assisted programs or other public or nonprofit agencies.

We recommend that this fund be made available to coordinate existing legal resources, thereby drawing together into a corporate unit those legal services designated to serve the elderly. This would involve legal, paralegal, professional counseling for the elderly, information and referral, as well as as nonlegal personnel.

Also to locate specialized areas, such as the National Senior Citizens Law Center or any other public or private agencies available to render service.

Further, to coordinate existing legal resources such as Legal Aid, Public Administrator, Public Guardian, District Attorney's office, and others.

Also by use of the rich resources of retired attorneys, who could serve as counselors and provide us our referral services, who, because of their years of rich experience and additional time available, could on a part-time bases be located in the community at strategic meeting places of older people, such places as countywide service centers, senior citizen centers, nutrition sites, information and referral offices, churches and synagogues out in the community where the services would be accessible to the aging.

Since there is a Federal program which supports medical needs called Medicare, why not develop a service to meet legal needs called "legal care"?

LEGAL INSURANCE FOR POOR ELDERLY

For those seniors below the poverty level and those just above poverty, an adequate form of legal insurance provided on a basis of right would assure the older persons that their rights are protected.

The real need, ladies and gentlemen, consists of funds to pay for costs of legal services in the court process or other processes requiring the payment of costs. Under title III there could be developed a program to coordinate the services of all legal resources. These services should be located within the reach of older persons, but the problem remains—who will pay the bill when the case has to be litigated?

We recommend that a pilot project in the form of a special unit be created using public and private agencies and funded with sufficient resources to cover all costs, and that this program be developed in this community possibly as a demonstration project to meet the increasing legal needs of the elderly.

It has been well pointed out that elderly persons do have problems in dealing with the bureaucracy. They experience long waiting periods, they experience encountering a complex maze in problem solving where income, housing, health, socialization and other problems exist. Consider now the frustration of going to so many agencies seeking services. This is where title V under the Older Americans Act, the multipurpose centers with centralized services, would help to provide a one-stop service for all their needs.

Today's seniors are not the lawbreakers. They are not the activists or the new trend of persons who are able to demand their rights. Today's seniors, especially in minority and ethnic communities, due to language and cultural barriers in the urban megalopolis, are faced with a world where people do not for the most part help their neighbors or have concern for the aging.

In closing may we enumerate the following illustrations of the varied kinds of problems that confront older persons, as observed from the records of our volunteer attorney over the period of a few months, which could often be solved with the proper legal guidance and representation, such as the making of wills and codicils, credit problems, recovery of loans made, malpractice, faulty repair by mechanics, legal change of name, excessive public utility charges, appointing of legal guardian violation of welfare and health department regulations, various criminal violations, various traffic violations, insurance problems, probate of estate, improper medical service, negligence actions, divorce actions, action for nonsupport purchase and sale of real estate landlord and tenant disputes, property tax problems, eviction problems, rent increase problems, defective equipment in an apartment, union pension disputes, general pension disputes, employee-employer disputes, Social Security problems, theft of personal property.

Ladies and gentlemen, we thank you for this opportunity to speak briefly on behalf of older persons, many of whom are in need of legal services.

Senator TUNNEY. Thank you very much. That is an excellent statement. Mrs. Barnes. We really appreciate it.

[The prepared statement of Carnella J. Barnes follows:]

PREPARED STATEMENT OF CARNELLA J. BARNES

Mr. Chairman, members of the United States Senate Special Committee on Aging, ladies and gentlemen. I am here today representing the County of Los Angeles Department of Senior Citizens Affairs, in the capacity of Assistant Director. However, before reading my statement, I would like to make some introductory remarks. We count it a distinct honor to be here today essentially in behalf of the elderly, who have helped to lay the foundation upon which we, today, are still building but many of whom in their later years are denied the full benefits of their labours. We were pleased to be asked to speak in behalf of the elderly today in explaining their needs, in the area of legal services. We are aware of your deep concern and commitment to the dignity and worth of the aging population, for you have demonstrated by the hearings, which you

have conducted, in preparation for meaningful legislation. We are concerned that today's activity is not an engagement in futility, that these proceedings will not gather dust on the shelves, but rather they will become the major initiator of a process which will result in enlightened policies and programs designed to meet the multiple legal needs of the aging in our society.

In Los Angeles County, there are approximately 700,000 persons 65 years and over and 1,300,000 who are 55 and over. Many of these older persons are lonely and isolated individuals operating on limited incomes, deserted by relatives and forgotten by society. Most of them have given up and disengaged themselves from society, to the point of total isolation. This withdrawal has started the rapid process of mental and physical deterioration which eventually leads to social dependence. This is the period when the aged are most likely to fall prey to bunco, fraud, and many pitfalls and problems requiring the services of a professional, providing legal services.

The National Center for Law on Poverty in cooperation with the County of Los Angeles, Department of Senior Citizens Affairs, and other agencies were engaged in a series of community meetings with the aging, to determine the need for paralegal volunteers who would assist in interpreting the legal needs of the elderly to the legal profession, which provides services to the public.

The response to this community indicator was so impressive that the National Center for Law on Poverty instituted a voluntary training program to which staff and volunteers came for training, to serve as enablers to the elderly.

This program resulted in the placement of a volunteer (retired) attorney in our office, who serves four hours each week. Publicity for this program is largely by word of mouth and walk in traffic. He serves older persons, by appointment. His schedule is filled every Tuesday. We dare not advertise. The most needy, however, are the persons who still are not aware of the services of our office or, more important, many of the aged do not know where to turn, in the community, for legal help. What are some of the barriers to legal services for the aging?

1. The first major barrier is knowledge of a legal resource which is sympathetic to their problems. A professional service which has the time to listen and to help to unravel the problems of an older person who no longer remembers the details nor remembers where the records are (if they are still available).

2. The cost of legal services are beyond the income capability of most aged persons in Los Angeles County, 15% of whom live below the federally defined poverty level of an annual income of \$1,850 for single persons or about \$154 per month, \$2,400 for a couple or \$200 per month. Additionally, 14% of the aged have an income just over the poverty level. Rent payments alone, range from \$80 to \$190 for older persons who do not receive some kind of rent supplement. Witness the case of the older woman whose rent in 1973 was \$95. It was raised May 1974 to \$195 since the lifting of rent ceilings. Her monthly income is \$240 and she was told by her landlord to pay the rent by June 25 or she would be evicted on June 28. She could no longer buy toothpaste or cooking oil for her food. She had to use bacon drippings for cooking and seasoning.

3. Many aged persons who need legal assistance are afraid. They are afraid to go alone and afraid that the costs will be so high that all will be lost in the process. Many older persons do not hear well or see well enough to transact their business. Many do not have relatives, nor do they have friends, whom they can trust, who understand their problems and are willing to go with them, to seek service. They are afraid of the attorneys who are best able to serve them.

The question is raised—How can Title III of the Older Americans Act be Used to Provide Legal Services?

You are familiar with Title 45, Chapter IX—Administration on Aging—Department of Health, Education and Welfare—Section 903.66(b)(11) which states, "Where necessary and feasible, enter into arrangements, consistent with the provisions of the area plan, under which funds under this title may be used to provide legal services to older persons in the planning and service area, carried out through Federally assisted programs or other public or nonprofit agencies."

We recommend that funds be made available to:

1. Coordinate existing legal resources, thereby drawing together into a corporate unit those legal services designated to serve the elderly. This would involve legal, paralegal, professional counseling for the elderly, information and referral as well as non-legal personnel.

2. To locate specialized areas such as the National Center for Law on Poverty or any other public or private agencies available to render service.

3. To coordinate existing legal resources such as Legal Aide, Public Administrator, Public Guardian, District Attorney's Office, and others.

4. By use of the rich resources of retired attorneys, who because of years of experience and additional time available, could on a part time basis, be located in the community at strategic meeting places for older people—such meeting places would be Senior Centers, Nutrition Sites, Information and Referral Centers, Churches, and Synagogues out in the community, where the services are accessible to the aging.

5. Since there is a federal program which supports Medical needs, called Medicare, why not develop a service to meet legal needs called "Legal Care?"

6. For the poverty level and those just above poverty, a form of legal insurance provided on a basis of right, would insure the older persons that their rights are protected.

7. The real need, gentlemen, consists of funds to pay the cost of legal services in the court process. Under Title III, we could develop a program to coordinate the services of the legal resources; these services should be located within the reach of the older person, but the problem remains. Who will pay the bill when the case has to be litigated?

8. We recommend that a pilot project in the form of a special unit be created, using public and private agencies and funded with sufficient resources to cover all costs, be developed in this community as a demonstration project, to meet the increasing needs of the elderly.

The Elderly Have Problems Dealing with the Bureaucracy:

1. When older persons apply for service, they experience long waiting periods when assigned to a lawyer.

2. There is a complex maze encountered in solving simple problems, e.g., an aging person needs income, they reject the idea of welfare, they ask for a pension when what they were really talking about was welfare. It takes time to listen. Older persons now need Supplementary Security Income. They may also need help with housing or health services. They may also need socialization. Consider now the frustration of going to so many agencies seeking services. This is where Title V, under the Older Americans Act, the Multipurpose Centers with centralized services, would help to provide a one stop services for all of their needs.

Today's Senior Citizens are not the lawbreakers. They are not the activists or the new trend of persons who are able to demand their rights. Today's Seniors, in the urban megalopolis are faced with a world where people do not help their neighbors or have concern for the aged.

In closing may we enumerate the following illustrations of the varied kinds of problems that confront them, very often that could be solved with the proper legal guidance and representation.

1. Making of wills and codicils
2. Credit problems
3. Recovery of loans made
4. Malpractice
5. Faulty repair by mechanics
6. Legal change of name
7. Excessive public utility charges
8. Appointing of legal guardian
9. Violation of welfare and health department regulations
10. Various criminal violations
11. Various traffic violations
12. Insurance problems
13. Probate of estate
14. Improper medical services
15. Negligence actions
16. Divorce actions
17. Action for non-support
18. Purchase and sale of real estate

19. Landlord and tenant dispute
20. Property tax problems
21. Eviction problems
22. Rent increase problems
23. Defective equipment in an apartment
24. Union pension disputes
25. General pension disputes
26. Employee-employer disputes
27. Social Security problems
28. Theft of personal property

Ladies and gentlemen we thank you for this opportunity to speak on behalf of the many older persons who live in Los Angeles County who are in need of legal services.

Senator TUNNEY. Mr. Woods, please proceed.

STATEMENT OF MATT WOODS, DISTRICT DIRECTOR, SOCIAL SECURITY ADMINISTRATION, DOWNTOWN LOS ANGELES OFFICE

Mr. Woods. Thank you, Senator Tunney.

It is a pleasure to be here this morning as the district manager of the Downtown Social Security Office, and I do welcome the opportunity to testify at the hearing.

When the aged as a group are mentioned, an immediate thought has to do with their needs. Naturally, their greatest need is income and that's where Social Security comes in. Originally Social Security was designed to replace the loss of income when an individual retired, but over the years the program has been expanded until today it provides retirement, survivorship, and disability protection for practically all Americans and health insurance protection for the aged and disabled. Today Social Security is the Nation's basic insurance program. It has become the first line of defense against inadequate income, especially for the aged. In Los Angeles County alone there are over 700,000 age 62 and over receiving Social Security.

The Social Security Administration has also since January administered the Supplemental Social Security Income Program which, unlike the insurance program, is needs-related and replaces the aid to the aged, blind and disabled formerly State administered.

The administrators of Social Security, including me as a district manager, have a deep concern for the aged that must survive on a fixed income. It is and always has been the policy of the Social Security Administration to give the best possible service to the public, consistent with the need to insure that disbursements from the trust funds are made only to those who are entitled and to insure that everyone who is entitled received the amount to which he is entitled and that all persons are fully informed of their rights. While I cannot cover every aspect of the Social Security program in providing service to the aged, I would like to briefly cover the following four topics:

SOCIAL SECURITY SERVICES FOR THE AGED

1. Keeping the public informed;
2. Assisting claimants to perfect their claims, getting evidence such as proof of age, et cetera, providing service, including information and referral;

3. Advising individuals of their rights under the program, the right to reconsideration and appeal, and also legal services that are available to them;

4. Due process issues to which the courts have addressed themselves, for example, notice, opportunity to be heard, et cetera.

PUBLIC INFORMATION PROGRAM

The Social Security Administration recognizes the public right to know and its responsibility to keep the public informed. For the most part this is carried out by the Social Security District Offices located throughout the country and each is responsible for carrying out a program which will meet the needs of the area and population that it serves. The public information program is designed to serve the public through direct personal contact, group and organization communications, broadcast and print media and any other means that will serve the public interest. In the Los Angeles area we are using all means at our disposal. We meet individually with groups and organizations that are interested in and work with the aged population. We have held public meetings with these same groups. These include senior citizen organizations and clubs, welfare rights groups, Coalition for the Rights of the Disabled, National Association for the Blind, Department of Public Social Services, Western Center for Law and Poverty, legal aid groups, major volunteer groups, and many, many others.

As in the case of all district offices, news articles are prepared for the major newspapers and for the weekly papers as well.

Employees are continually giving speeches to large employer groups, service clubs, schools, civic groups. We set up and participate in retirement seminars, not only for employers but for city, State, county, and Federal groups as well.

We write radio spots and distribute them to local radio stations. We do TV programs that we prepare and appear as guests on others.

The many information pamphlets published by the Social Security Administration are distributed throughout the area. We also maintain pamphlet racks at strategic points in our service area.

The Social Security program is comprehensive, complex, detailed and constantly changing. It is not easily understood. We recognize that keeping the public informed requires constant vigilance and a continuing effort.

ASSISTING CLAIMANTS IN PROTECTING CLAIMS

The Social Security Administration recognizes an obligation to assist the claimant who is unable to prosecute an application on his own behalf. Language barriers, illiteracy, poverty, mental and physical illnesses and cultural differences may all seriously hamper an individual's ability to do things for himself. SSA personnel is available to assist any individual to insure that his rights under the law are fully realized.

For example, if a person has difficulty in establishing his age, the district office will assist him in obtaining a birth certificate or baptismal record or in obtaining a census record. Similarly, if the wages he has earned have not been properly credited to his account, possibly because he had failed to furnish his Social Security number to his employer or had furnished the wrong number or name, Social Se-

curity will search its records and do everything it can to see that he receives full credit. The office will do everything possible to assist such individuals in completing their applications, obtaining the necessary evidence or otherwise establish their entitlement.

Where applicants are not entitled under SSA or have need for other assistance, part of SSA's service to the public has been to help such individuals get the services they needed. Information and referral services have been provided to persons of all age levels and segments of the population who contact district and branch offices or call the teleservice centers and who are in need of nonprogram services. This function as provided in SSA differs, of course, from that provided in full-time information and referral services and agencies. The primary mission of SSA is, of course, to pay those who qualify. However, in the process of accomplishing its primary mission of determining eligibility and paying benefits and supplementary income and because it has contact with so many people, SSA has traditionally provided information regarding other services available in the community and has made referrals to service agencies. The SSA information and referral processes have recognized that the Social Security public served is largely composed of individuals who are aged, disabled, or bereaved and who, because of their status, may have particular need for social services.

FOREIGN LANGUAGE PAMPHLETS

In assisting people with their claims, let me point out that in downtown Los Angeles there is a large number of Japanese in an area called Little Tokyo; a large number of Chinese in an area called Chinatown, a large number of Koreans and Filipinos in two separate areas; the largest concentration of Spanish-speaking people in North America outside of Mexico City; 10 percent of the city's population is black.

To better serve these groups and to assist them, SSA leaflets on the new Supplemental Security Income Program have been printed in six languages in addition to English. They are Japanese, Chinese, Korean, Spanish, Filipino, and Samoan.

Our office has a permanent staff of 88 people. Our staffing breakdown is as follows:

All of the 26 Mexican-Americans and all of the Orientals are bilingual. In addition to speaking the language, they also interpret and translate documents.

As I mentioned before, there are many people in our service area who cannot or will not come to a government office. Some do not speak English, have been raised in a different culture and feel more secure in their own community. However, many of them need our help, so when they do we send a claims and service representative to them.

In addition to the various contact points that we service, the downtown office has responsibility for the operation of the largest Social Security Teleservice Center in the Nation. Serving a population of 8.5 million people, this facility has the latest modern telephone equipment and is staffed with approximately 100 people.

ADVISING INDIVIDUALS ABOUT THEIR RIGHTS

To what extent do we advise individuals about their rights under the program?

Whenever Social Security makes a decision affecting an individual's entitlement or eligibility to monthly payments, lump-sum death payments, hospital insurance benefits, enrollment for medical insurance, establishing a period of disability, or similar statutory rights, we send the person a written notice of the decision and include on the notice a statement of his special rights, and an invitation to contact a Social Security office for assistance. The Social Security appeal system is essentially three-tiered and is administrative in nature rather than adversary.

At the first level, reconsideration, a specially trained staff, separate from the staff who made the first decision, completely and thoroughly readjudicate the case as though they were making an initial finding. If additional information or evidence is necessary, a Social Security office is instructed either to obtain it or to assist the applicant in getting it himself. An applicant does not have to have new evidence. The decision will be reviewed solely on his request, on the possibility an administrative error may have been made. A detailed notice of the reconsideration decision is sent to the applicant with an appropriate statement of his further appeal rights.

After reconsideration, an applicant can request a review of his claim by an administrative law judge. The applicant has the right, if he chooses, to appear in person and tell the story in his own way. If he has new evidence, he can present it. At any of these levels, of course, the applicant has the right to be represented by an attorney, friend, or other person of his choice. The administrative law judge may also obtain other evidence, either through a Social Security office or from qualified consultants, such as medical specialists. Administrative law judges travel to the community of the applicant, if necessary, and can even hold the hearing in the applicant's home if critical that he do so. A detailed decision is sent to the applicant, again with further appeal rights outlined.

After the hearing, the decision can be further appealed to the Appeals Council in Washington, which can reject or accept the appeal. If it rejects the appeal, the applicant can file in U.S. District Court. If the Council accepts the appeal, again the applicant can present new evidence and the Council can also direct either a Social Security office or an administrative law judge to obtain further evidence or testimony.

In either case, Appeals Council review is the last of the applicant's administrative remedies. The next challenge to the decision if the applicant wishes to do this is through appeal to a U.S. district court in an adversary action.

We are just as interested as the applicant in seeing that a correct decision has been made. To this end our offices and personnel actively help the applicant pursue his claim. This may involve such things as writing letters to other government agencies, and foreign countries, purchase of documents proving attainment of a certain age, purchase of consultative medical examination, and personal examination of records, employment, age, alien status, et cetera, at the source.

If the applicant does need a referral for legal assistance, either in connection with Social Security matters or other problems he has, we have the information and furnish it readily. For example, the Los Angeles area has some 16 to 20 aid foundations. Our offices in the Los Angeles area furnish addresses, telephone numbers, and office hours of these foundations to applicants who have need of the services. Our Los Angeles Teleservice Center reports that it furnishes this information frequently to people who call in rather than visit a Social Security office.

DUE PROCESS ISSUES

It has been an objective of Social Security from its earliest days to assure that individuals were apprised of their rights and of their obligations. We actually were rather proud of the fact that our procedures and our notices were, we thought, designed to provide this kind of assurance.

The recent Supreme Court case of *Goldberg v. Kelly* held that full oral evidentiary hearings were required before terminating, suspending, or reducing benefits or recovering overpayments. This was a welfare case. The courts have subsequently taken a similar position with respect to payments made under Social Security. Even before the cases involving the Social Security program specifically we have been reviewing our processes to take the steps that we felt were necessary to provide due process protection and we think we have improved our processes. However, there are situations in which we believe that equivalent due process protection can be provided without an action hearing. Whether this can be accomplished will ultimately be determined by the courts. While it is impossible to briefly discuss the due process cases, the challenges to the operating program will impact on all existing Social Security programs and it will also influence the enactment of new programs and amendments. I should make the point that while there may be a difference in thinking with respect to process, there is no difference in the commitment to assure the rights of the public we serve.

Thank you very kindly.

OMBUDSMAN SERVICES

Senator TUNNEY. Mr. Woods, one of the things that we hear frequently in complaints from senior citizens about the Social Security Administration is the red tape; that it is difficult for a senior citizen or any other person acting in his behalf to be able to get money from the Administration that they feel they are entitled to. What is the Social Security Administration doing in the way of providing perhaps an ombudsman to help senior citizens cut through this red tape?

Mr. Woods. We, Senator, have not provided any ombudsman ourselves. However, there are many ombudsmen in action programs who are currently operating in the Los Angeles area and we are cooperating with these people 100 percent. When the questions arise or when the case comes to them, they come to us, of course, for assistance. Now, hopefully, we are trying in our relationship with the ombudsmen to display the attitude that we are concerned about the people as human beings. In some instances we do find that may-

be we have been lax in taking the proper action that should have been taken, but in most of the instances, and we are serving nationally over 30 million people, we do an excellent job. I think probably our main concern where we get into the ombudsmen and into the problems and into the legality, is in our disability program where we as Social Security people have a third party who is, since we are not medical people, doing our medical determinations for us. Herein lies somewhat of a disagreement as to what is and what is not a disability as defined by our law.

Senator TUNNEY. The Social Security Administration doesn't plan to provide ombudsmen type services, do they?

Mr. Woods. Not at the present time, to my knowledge, in the Los Angeles area, except to continue to work closely and to cooperate with existing ombudsmen. I think we do have a new cooperative role in the SSI Supplemental Security Income Program with the Los Angeles County Department of Public Social Service. We have taken over from the county some 200,000 new cases in the aged, blind, and disabled categories. Our role is to provide the income maintenance and the county to continue to provide social services. We are presently in the process of establishing procedures with the county that will better serve the individuals in both income maintenance and social services.

HELP IN OBTAINING PROFESSIONAL SERVICES

Senator TUNNEY. When a participant has a problem requiring professional services, what steps, if any, do you take to help him obtain these services?

Mr. Woods. I think, Senator, as I mentioned before in summarizing, we are deeply involved in the information and referral for senior citizens, not only for social services, but also for other programs that might be available to them as well as legal services. We have at our disposal and at the disposal of the office a directory of legal resources for Los Angeles County and vicinity, which is distributed by the Community Relations Conference of Southern California, which is some 52 pages in length. We do refer people, depending on what they are looking for, the type of legal services they are looking for.

Senator TUNNEY. Say Mrs. Garcia came into your office, she was here testifying and you heard her, and said through her interpreter, "I have a problem, I am entitled to additional benefits under the Social Security law." And the feeling on the part of your representative is that, no, she's not entitled to it. Then she says, "Well, I think I am and I want a lawyer to be able to pursue my claim." Considering what her income level is, which is low, and the fact that she can't afford to pay \$45 an hour, what is there in that green book of yours that would give to her a feeling that she, if she takes your counsel, will be able to be hooked up with a lawyer who will be able to pursue her claim for her at a price that she can afford?

Mr. Woods. Well, I think there are several agencies in the green book that would provide the type of services that would see that she got the due process under the law. I think first, since she doesn't

speaking English, we would provide a Spanish-speaking person to discuss her case with her from our standpoint and try to, from our own first level or the lowest level, determine if we could not settle the issue in the district office. If we could not, I personally am acquainted with two of our employees who are Spanish-speaking people who have left our services and have gone into the free fee type legal services in Los Angeles County for Spanish-speaking people, and I think we would not have any difficulty referring her.

It may be that we, because of lack of time, do not have enough feedback to find out whether or not the services or the resource that we referred her to are completely adequate.

Senator TUNNEY. Let me ask you this: Let us say that you were retired and that you lived on your Social Security pension, period. You are very familiar with what your entitlement is—the average is \$181 a month—and let us say that you came back to your old office and said, “I’m entitled to \$210,” and the fellow who was in your position at that subsequent date said, “No, I’m sorry, despite the old school tie, I just can’t help you. We are only going to give you \$181.” and you said, “Well, I want assistance,” and the fellow says, “Well, here’s the old green book that you are so familiar with, you go help yourself.” Do you feel that you, using that green book as a retired person getting \$181 as a pension or as a payment from the Social Security Administration, would be able to get the kind of representation that you think you are entitled to in the pursuance of your claim?

Mr. Woods. I would probably be highly skeptical that I would get the type of services that I sought.

Senator TUNNEY. That is a very honest answer and I appreciate your honesty on it, because I think that this is the problem, and a serious one. It has nothing to do with you, because you obviously are doing the best you can as an individual working within the structure of the law to provide the services that you can, and you are just one human being and I know exactly what it’s like. I am a Federal employee, too. I am 1 Senator, 1 out of 100, 1 out of 535 Congressmen, and I know the frustration that sometimes I feel in trying to help people with problems, particularly as it relates to legislation, trying to get something through the Congress and get it to the White House and signed by the President, and it is very difficult.

ABSENCE OF COORDINATED POLICY

I am deeply concerned about the legal representation of senior citizens, which is the reason that we held this hearing today and brought the two committees out. It is not the Social Security Administration’s fault, nor is it the Veterans’ Administration’s fault. It is the fact that we have not had a coordinated policy in this government of ours to provide the individual an opportunity for adequate representation of his claim when he is in disagreement with the agency that is responsible for administering the programs. If the agent responsible for administering the programs agrees with him, there is no need for an attorney. It is only when there is a

difference of opinion, and that happens frequently. It is difficult for the agency itself to be a lawyer against itself, and that is why we need to have some other form of assistance for the senior citizens so that when there are these disagreements they will have their legal claims pursued to the best of the ability of a duly qualified attorney.

I want to thank you very much for your testimony. It has been good testimony and honest testimony, and you have been of assistance to the committee, as has Mrs. Barnes.

We really appreciate your being with us, too.

Mr. Woods. It's a pleasure.

Senator TUNNEY. Now we have our National Senior Citizens Law Center Panel, Mr. Paul Nathanson and Ms. Deborah Arron.

Mr. Nathanson, please proceed.

STATEMENT OF PAUL NATHANSON, EXECUTIVE DIRECTOR, NATIONAL SENIOR CITIZENS LAW CENTER

Mr. NATHANSON. My name is Paul Nathanson. I have an expanded prepared statement which I have submitted for the record.*

I am the executive director of the National Senior Citizens Law Center, which is an OEO-funded legal services backup center, which is a mouthful. It means that we are funded until June 30. We are a backup center which provides technical assistance to legal services programs around the country with respect to the special legal needs and legal problems of the elderly poor.

Unfortunately, this gets to be a real problem for us. We are not funded to take individual cases at all, but rather are forced to send those individual cases to legal services offices, and then in many cases the individual legal services offices cannot take the clients because they are above, as you have already heard today, the poverty guidelines. That would be a first suggestion, that is, that there be a concrete reexamination of the poverty guidelines for eligibility for free legal services for the elderly.

REEXAMINATION OF ELIGIBILITY GUIDELINES FOR LEGAL SERVICES

As you pointed out earlier today, Senator, the guidelines are rather unrealistic.

Senator TUNNEY. Do you know when those guidelines were established?

Mr. NATHANSON. I am not certain. They have been readjusted, I think, according to inflation factors a couple of times, but I think they have been established since the mid 1960's.

Senator TUNNEY. Yes, but I understand that they were basically established in 1965. I am talking about the present level. Are we still on the 1965 level?

Mr. NATHANSON. I think so. They have been readjusted for cost of living.

Senator TUNNEY. Have they kept up with inflation?

Mr. NATHANSON. Not really. I think initially there was some more realistic type of guideline that it was tied to, I think food costs, and then they went back to a different type of inflation factor because that was rising too quickly.

*See page 65.

Senator TUNNEY. As we all know, just for instance in the last year and a half, there probably has been a depreciation in the value of the dollar of about 16 percent. Last year, it was 9½ percent and the first quarter of this year it was 14½ percent on an adjusted annual basis, so that would be in the first quarter, roughly speaking, about 3¾ percent actual depreciation on an annual basis. But we are now well into the second quarter, so it's pretty close to 15 percent depreciation in the value of the dollar in the last 18 months. I am just curious to know if we have had an adjustment on the basis of the true inflation, and obviously from what you have indicated we haven't.

The staff indicates that in 1973 alone food prices jumped by 20 percent. This increase was especially oppressive for older Americans because about 27 percent of their income is spent on food in contrast to about 16 percent for all Americans. So seniors have been getting it going and coming; mostly going.

PEOPLE FALLING BETWEEN THE CRACKS

Mr. NATHANSON. That is very correct. As I say, I don't have the exact figures. I know that the poverty guidelines as far as those eligible for free legal services have not kept pace. And even if they had, you know, you are going to have a vast group of people who fall between the cracks because they are not poor enough to obtain free legal services and certainly don't have enough assets or resources to get legal services from the private bar. As I said earlier, we are a backup center. We don't take individual cases. Unfortunately, organizations hearing our name send us individual clients and then we are confronted with having to send them out to the private bar where all too often nothing happens; or we try to send them to legal services offices where they often don't qualify for free services.

I would like to give an example, really, of how pathetic the whole situation is. The U.S. Labor Department, when it answers questions of Senators and Congressmen with respect to private pension claims, has a form letter which it sends back to the Senators and Congressmen telling them "we can't help anybody with respect to private pensions, but why don't you see the National Senior Citizens Law Center." That's pathetic, as I say, because we have 1½ lawyers working on private pensions. Ralph Nader also sends people to us. Obviously, we just don't have enough staff around to handle that. As I say, the official statement of the Labor Department, in response to Congressmen, is why don't you go see a legal services program because they will do something for you. We can't. I think it is important that governmental programs themselves do more to aid individuals. The Labor Department or the Internal Revenue Service, with respect just to private pensions might look into mechanisms by which they could help individual pension plan participants pursue their claims. I think the present legislation, H.R. 4200, has some provisions for arbitration of pension disputes, and that's also a step in the right direction as far as having individuals be represented, although I understand it's in deep trouble in conference.

Senator TUNNEY. Well, it is.

What I am curious to know is how many people do you have in your office?

Mr. NATHANSON. We have seven attorneys in Los Angeles and three in Washington.

NO DIRECT LEGAL SERVICES PROVIDED

Senator TUNNEY. Seven in Los Angeles, and you provide legal services for how many senior citizens?

Mr. NATHANSON. We provide no direct legal services. We are a backup center so that we get requests for assistance from the field programs, from the 2,500 legal services lawyers around the country with respect to senior citizens' problems. It is a drop in the bucket, I think, as becomes obvious quickly.

Senator TUNNEY. I would like to understand better the concept of backup centers. I thought backup centers were capable of actually practicing law and helping the citizen go to court, if necessary.

Mr. NATHANSON. The way we get involved in a case as a backup center is to have a legal services program call us and say we have a client. Mr. Jones, sitting in our office right now, he has a pension claim case, can you help us. Now, that kind of help might take different forms. We might draft pleadings for them for the case, we might appear with them certainly as co-counsel and actually as you put it, practice law that way. But we don't have individuals coming into our offices on a day-to-day basis, unfortunately, really, for lots of reasons.

But if we are supposed to focus in depth on substantive problems—I think you have heard this morning how complex are the problems in the private pension area, or SSL, or Social Security—we don't have time, unfortunately, to see individual clients. We may help the local legal aid office with drafting pleadings, or anything else, but we don't see people on a day-to-day basis.

Senator TUNNEY. I see. And it is my understanding that one of the great problems that we have in the Senate-House Conference with the legal service program is the future of the backup centers.

Mr. NATHANSON. That's unfortunately very correct; right.

Senator TUNNEY. The Senate bill has them in there and the House bill does not.

Mr. NATHANSON. The initial House bill didn't. The conference bill that was passed by the House does.

Senator TUNNEY. It does?

Mr. NATHANSON. Yes; although I am not sure where that all stands right now. The Senate has yet to vote on that conference bill.

Senator TUNNEY. I understand now. I understand that there is a problem with the White House threatening to veto the bill if the backup centers are contained in the final congressional product.

Mr. NATHANSON. I have read something to that effect.

Senator TUNNEY. I hope I am wrong in my postulation, but that's what I have heard.

Go ahead, please, I'm sorry.

Mr. NATHANSON. I think one thing that can happen in addition to governmental agencies perhaps setting up assistance for individuals trying to wend their way through the myraid of statutory pro-

grams benefiting the elderly is changing an attitude that exists in some of these agencies. You touched on this before and my ears perked up when you said it, because the fact is that unless you change a basic attitude, let's say SSI—that's the program I am talking about right now which we are primarily concerned with—unless you recognize that this belongs to people as a matter of right and not something they have to come down to your office begging for, you won't change all kinds of other things that happen internally. Let me give you a small example.

The SSI program provides for a \$100 emergency grant if an individual walks into the office, if he can show there is an emergency. The claims manual which the Social Security Administration uses and has sent out to district offices specifically instructs district offices not to tell the people about it unless they know already.

Senator TUNNEY. Cooperative attitude.

Mr. NATHANSON. I am informed that David Affeldt had an example of what happens to senior citizens on a day-to-day basis trying to reach their Social Security office by telephone—no one answered the phone when he tried to reach them. We are informed informally also that some offices are, even in the local area here, closed during working hours because the SSI demands are too high for them to deal with right now.

NEED TO HIRE ADMINISTRATIVE LAW JUDGE

As another example of an attitude and getting it together as far as SSI, I would recommend that the Social Security Administration hire some administrative law judges so they can begin to hear appeals on SSI. The problem with that is that there are, I think, probably hundreds of thousands of initial determinations with respect to SSI eligibility sitting right in offices in California right now which have not been sent out because of the fear of an appeal, and, therefore, you know, the docketing of cases for administrative law judges. That whole process which Mr. Goldhammer talked about briefly before is something that has to be looked at, as far as taking 2 to 3 years to get an appeal through.

I was pleased to hear that the case of *Goldberg* versus *Kelly* was at least in the lingo of the Social Security Administration. I am not sure at all that it is at present adhering to *Goldberg* versus *Kelly*. In point of fact, the position of the Social Security Administration has been that *Goldberg* versus *Kelly* applies only to welfare situations because Social Security takes the position that Social Security recipients don't really need their checks, that is, there is no dire need, and therefore the *Goldberg* versus *Kelly* type of due process rights don't apply.

Senator TUNNEY. Of course, and as you point out, if you have a right and it takes 3 years to pursue that right to a successful conclusion, in the case of some senior citizens they just aren't going to be around because of the problem of aging itself. I mean if a person is 85 years old, what is their life expectancy, 1 year, 2 years, and if you have 3 years as the term it takes to pursue a right to a successful conclusion, but you go through all the appellate procedures, I just don't think you have justice. That is not justice.

Mr. NATHANSON. That is exactly right. I think in addition, of course, as Mr. Goldhammer pointed out, the private bar could get involved in Social Security kinds of cases. In that connection we ought to be looking at the fees system. I am not particularly enamored of even the Social Security setup or the SSI setup which allows fees to be taken out of an individual's recovery. I don't think that is the best of all possible worlds. It does a couple of things. No. 1, it takes it out of the recovery which belongs to the individual; No. 2, it may well force or militate for private attorneys to take longer in pursuing the claims because the individual is going to get a larger retroactive benefit out of which to take a fee. You know, if it takes 2 years, you get a longer retroactive benefit and a resultant bigger fee.

CONTINGENT FEE—BLACK LUNG DISEASE

Senator TUNNEY. Are you familiar with the black lung case? Congress passed legislation which gave benefits to people who suffer black lung disease, and the bar down in Kentucky latched onto this as being a potentially profitable business for themselves. One attorney that we had before this subcommittee testified that one attorney, by collecting large numbers of victims of the black lung disease and taking a contingent fee, was able to get from the Federal coffers \$1 million one year and, I think the next year he was up to \$1½ million. He was running black lung victims through his office like cattle through a stockyard and, you know, just clipping them for about 30, 35 percent of their recovery apiece, really an outrage.

Mr. NATHANSON. I have heard about that, and I know there obviously ought to be limitations on it. I think one thing to do informally would be to really give that good publicity. You would probably get a lot more private attorneys handling black lung cases and he won't have all the clients.

Senator TUNNEY. There were quite a few earning in excess of \$100,000, but I will say it was a relatively small group. I mean maybe 10 or 15 of them, earning that kind of money in Kentucky.

Mr. NATHANSON. I agree there obviously should be limitations on what is done.

The VA thing that was mentioned earlier clearly ought to be re-examined. The \$10 limitation on any private attorney handling a veteran's case is ludicrous. That means you are not going to have private attorneys. From what we are beginning to see, the whole Veterans' Administration is something that has not at all yet been the subject of any kind of scrutiny from, as you pointed out earlier, someone from outside. It is very much an in-house kind of shop and you have to have someone from outside looking at them.

I think certainly that the private bar ought to be encouraged to do more. Unfortunately, around the country it has not been doing too much for the elderly. They have no programs as far as I am appraised in California, county or State, to benefit the elderly. I think it is really potentially a very fruitful kind of activity especially for retired attorneys to get involved in. Perhaps the local

bars could set up different types of committees, especially with respect to the elderly, manned by retired attorneys to do exactly what we have been talking about here all day.

I think representatives of the elderly ought to go down to the local bar and say, "What are you doing for the elderly?" And if they are not going to do anything, there ought to appear in the newspaper the next day, "Local bar refuses to help the elderly". I think senior citizens themselves ought to start getting a little adamant with respect to the private bar. The bar hasn't kept up their end at all.

As an another suggestion—and I go through all of these suggestions in my prepared testimony in more depth—I think I would like to see private employers doing more with respect perhaps to pre-retirement counseling kinds of things. The committee might consider some sort of special tax benefits, whether it be a tax credit or something else, to allow corporations to provide on an expanded basis preretirement counseling with respect to the options available under their own pension plans, for example. Estate planning information is also actual. It is often too late when you are 65 to get that kind of advice after you have already retired.

Senator TUNNEY. Sure.

HOW CAN PROFESSIONALS IN AGING USE LAWYERS?

Mr. NATHANSON. In addition, and this is something we confront on a daily basis, the professionals in the field of aging, and that includes, I think, administrative agency personnel and those in academe, really don't know what lawyers do, and I think it is critical to get them to be aware of how to effectively use lawyers. I mean they say the elderly have income problems, they have housing problems, they have transportation problems, and never do these professionals in the field of aging recognize that lawyers can do something about those problems and they ought to call in lawyers at the appropriate time.

I mean filing a lawsuit and forcing Governor Reagan to call the legislature back into session to supplement SSI, on the one hand, is an income issue; on the other hand, it is lawyers who were involved. The agencies all too infrequently recognize what lawyers can do.

As a suggestion in that area, I would say you ought to think about some kind of special funding for programs to maybe run through gerontology centers or other agencies to educate the aging professionals about the law and lawyers. Debbie Arron will talk about getting involved in curriculum in law schools. I think that is important. But I think perhaps maybe more important is having lawyers involved in public administration fields where professionals in the field of aging are educated so they can know about what lawyers do.

FUNDING AND EXPANDING LEGAL SERVICES PROGRAMS

One final point. I really think that a major thing the committee should be looking at is, new ways of funding and expanding funding for legal services programs for the elderly, which aren't necessarily income based, as the Older Americans Act is not. OEO is, as

you know. The Older Americans Act in Section 304 specifically mandates and gives a high priority to the provision of legal services. Unfortunately, the Administration on Aging, through its regulations and memoranda it sends out, has downgraded that priority. I would recommend, hopefully, that the committee look into spurring the Administration on Aging into looking more exactly at the act with respect to the provision of legal services.

Senator TUNNEY. Thank you very much, Mr. Nathanson.

Before we turn to Ms. Arron, I would like to ask whether or not you think it would be worthwhile if this committee attempted to encourage the ABA to hold a meeting with some of the national senior citizen associations for the purpose of attempting to fashion some kind of an ABA-sponsored program working, of course, in conjunction with the local bar associations in order to have a greater private bar effort to provide legal services to senior citizens. Do you think that would amount to anything, or do you think we ought to be working at the local level up? Does it make sense to have the ABA involved and try to filter down some of these ideas, these proposals?

Mr. NATHANSON. On one level I am excited about that possibility, and, on the other hand, there has been some experience in the past which hasn't been all too fruitful.

I think perhaps something under the auspices of this committee might well focus the necessary kind of attention and might well get things rolling in high gear.

Senator TUNNEY. As you know, this committee is the first one which has ever taken a look at the question of access to lawyers by citizens in our country and the role that the ABA and the local bar associations have played in trying to bring about better access to lawyers, and I think we have made some progress. I do know that Chesterfield Smith, the president of the ABA, has been most cooperative and helpful. I don't know whether he represents an anomaly. I would like to think in the future we will have ABA presidents who will continue to be cooperative with the work of the committee because, as I said earlier, if lawyers don't assume the responsibility for providing services to the people of our country in a way that they can afford those services, then there is going to be a time when the State legislatures working independently or in conjunction with the national legislation, will just require them to do it and that's not going to be helpful for the lawyers, certainly, and I think that is why we have to move and move rapidly.

[The statement referred to follows:]

PREPARED STATEMENT OF PAUL S. NATHANSON, EXECUTIVE DIRECTOR, NATIONAL SENIOR CITIZENS LAW CENTER, LOS ANGELES, CALIF.

My name is Paul Nathanson. I am Executive Director of the National Senior Citizens Law Center, an OEO legal services program dedicated to redressing the special legal problems of the elderly poor. One of the high priorities of the National Senior Citizens Law Center, as enunciated by its Board of Directors (composed of representatives of the Administration on Aging, the American Association of Retired Persons, the American Bar Association, the Association of American Law Schools, the California Rural Legal Assistance, the Gerontological Society, the Farmers Union Senior Citizens Program, La Raza National Lawyers Association, the National Association of Retired Fed-

eral Employees, the National Bar Association, the National Caucus of the Black Aged, the National Clients Council, the National Council of Senior Citizens, the National Council on Aging, the National Legal Aid and Defender Association and the Western Center on Law and Poverty), is the expansion of legal services to the elderly poor.

Although our office is authorized to deal solely with the poor, we realize that the legal problems of the elderly exceed the confines of the official poverty guidelines. Therefore, we have a keen interest in not only improving the quality of legal services representation of the aged poor, but in increasing the public's awareness of the special legal needs of the entire elderly community.

Since the inception of the National Senior Citizens Law Center, the number of Legal Aid or Legal Services attorneys dealing with the special problems of the elderly has certainly increased. As a partial result of advertisements in our NEWSLETTER and the National Clearinghouse Review, showing our willingness to provide expert assistance on legal matters of poor elderly Americans, we have received ever increasing requests for aid from Legal Services attorneys. In fact, these may soon be more than we can efficiently handle. These attorneys ask for our help because they have limited expertise in the areas of law peculiar to the elderly, such as social security, pensions, Medicare and SSI. To remedy this situation, we are holding training sessions and preparing training manuals on these substantive areas of the law in order to familiarize Legal Aid lawyers with these programs and the most perplexing issues involved. However, no matter how successful our efforts to educate the poverty lawyers, a large proportion of the elderly poor will remain without adequate legal representation.

The situation of the non-destitute elderly, with respect to legal representation, is perhaps even more acute than that of the elderly poor, because they have too much income or resources to qualify for free legal services and yet, cannot afford to hire a private attorney. Furthermore, even if resources are available to pay a private attorney, such attorneys may be unavailable since the intricacies of the myriad of programs governing an elderly person's daily life are unfamiliar to the majority of the private bar.

Perhaps government agencies themselves can provide a partial answer. Programs have been devised that provide valuable subsidies to the elderly community, but unfortunately, these schemes include no provision for legal counsel for the recipients of such benefits. Perhaps offices could be established to provide unbiased legal assistance to the elderly (without regard to income guidelines) on matters of social security, SSI, or Medicare entitlement.

PENSION-COUNSELING SERVICE

The Department of Labor or the Internal Revenue Service, if properly organized, could provide a pension-counseling service. Even better, a special legal office of the Department of Labor or Internal Revenue Service could pursue for the potential pensioners claims which have been denied. The compulsory arbitration provisions of the Senate version of H.R. 4200 are at least a step in the right direction with respect to private pension claims. Furthermore, the Attorney General's offices (both Federal and State) could expand their activities to include a branch dealing with legal issues concerning the elderly. Of course, in addition, Federal and State governments should examine ways of expanding funding for programs designed to provide general legal assistance to the poor and moderate income elderly. Title III of the Older Americans Act administered by the Administration on Aging of HEW might provide a mechanism for such funding. The Act specifically gives high priority to legal services; however, this priority has not as of yet been implemented in the decisions of AOA.

Inevitably and justifiably the focus must move to the legal community itself. Many of the elderly do not have legal representation because private attorneys have no expertise in the government benefit area, and such attorneys may believe there is not adequate remuneration in dealing with such matters. The circle is vicious indeed, because if the private bar could be convinced that there is sufficient money in representing the elderly in pursuit of their rights—especially to special benefit programs—there would be more motivation and demand for gaining the necessary expertise.

Private attorneys should be encouraged to consider reorganizing and streamlining their office structures in order to make representation of the elderly pay. Specialization and routinization of a lawyer's tasks allow the handling of more small fee cases within less time. Obviously, greater efficiency results in greater profits for the time invested. Attorneys could create and use "kits" for routine matters, such as probate, social security and divorce. An office located in an area where moderate-income elderly work, live and shop might be successful. Increased use of paralegals in conjunction with such routinization and specialization could increase the cost efficiency of such an operation immeasurably. Elderly paralegals could effectively be used to handle substantive matters made routine by the attorneys, to do initial client interviewing, to go to aged individuals who cannot come into the office, and to do fact-finding or other component parts of a normal lawyer's tasks. The use of elderly paralegals would not only benefit the law firm, but it would add meaning to the daily lives of the aged persons involved and open up new and exciting job opportunities to such persons. Thus, a legal clinic (such as Meyers and Jacoby in Los Angeles), charging moderate fees to the elderly for their special legal needs could be a reality satisfactory to elderly client and private practitioner alike.

Obviously, prepaid legal service plans (insurance-like programs where periodic premiums are paid in order to receive delineated benefits) could vastly expand the available legal counsel to the elderly. Such plans could be instituted by aging organizations for their members, or by labor unions as part of employee retirement plans. Such plans should be designed to focus on special needs of the elderly with respect to benefit programs, pensions and retirement counseling.

PANELS OF ATTORNEYS TO HANDLE ELDERLY'S LEGAL NEEDS

In addition to aiding the elderly for remuneration, the organized private bar should not be allowed to escape its oft-voiced obligation to provide assistance free-of-charge on a pro-bono basis to the needy elderly. Perhaps local bar associations could set up special panels of attorneys to handle the legal needs of such elderly individuals or of organized groups of such individuals. This might be an especially fruitful endeavor for retired attorneys.

The Federal Government must, however, also do its share to encourage private bar participation in the legal representation of the elderly. Thus, the fee mechanisms existing for private practitioner assistance to elderly individuals pursuing benefits under Federal Government programs must be very closely examined. Serious questions can be raised about programs such as Social Security and SSI which provide that fees in a successful case are taken out of the needy elderly individual's recovery. Not only is this an undue hardship to the elderly person, it may act to encourage attorneys to delay in prosecuting a claim so that retroactive benefits and therefore the recovery and resultant fee will be larger. The \$10 fee limitation on representation by private attorneys in veteran's cases clearly should be reevaluated.

Private and public employers should be encouraged (perhaps by means of special tax or other incentives) to give aggressive and effective pre-retirement counseling to elderly employees. This type of employee benefit, which has begun on a small scale, could be greatly expanded to include counseling on pension plan options, Federal Government benefit programs, and estate planning, to list only a few areas. All too often, it is too late to receive such counsel at age 65 or older since many valuable options may by that time already be lost.

It has become increasingly obvious to those of us dealing with governmental agency personnel and other professionals concerned with the needs of the elderly, that a large majority of these individuals have no clear concept of what lawyers and the legal profession can do for the elderly. Oftentimes lawyers propose, draft, pass, enforce and interpret by regulation and otherwise, legislation which affects millions of elderly individuals. This is the legislation which is aimed at special needs of the elderly and which often creates the jobs of the professionals in the field of aging. These professions are not really aware of how lawyers can assist them in their job of making these benefit programs work for the elderly in their local areas. An extensive educational program should be undertaken so that professionals in the field of aging will know when lawyers can be of assistance to them and their aged clients.

Local senior citizens organizations and groups must also be sensitized to the need for lawyers working in the field. We would suggest not only that these groups include a legal staff in their ranks if possible, but that they offer information and referral services as to available programs to their members. The groups could compile lists of attorneys who are sensitive to the problems of the elderly and competent in the substantive fields that concern them, and should explore legal insurance for their members.

The National Senior Citizens Law Center and Legal Services attorneys around the country are doing what they can to represent the interests of the elderly poor, and these efforts are continuously expanding. Our services, however, are not enough to remedy adequately the legal problems of the bulk of our older citizens. Thus, we strongly urge that our recommendations and observations be considered carefully by this committee, the various legislatures, the private bar, and the public at large.

Thank you very much for your time and interest.

Senator TUNNEY. Our next witness, Deborah Arron.

STATEMENT OF DEBORAH ARRON, LAW STUDENT, UNIVERSITY OF CALIFORNIA AT LOS ANGELES

Ms. ARRON. I would like to submit my written testimony for the record* and summarize it orally. My name is Deborah Arron. I am a 3d-year law student at ULCA, and I am currently employed by the National Senior Citizens Law Center. During the last quarter of my 2d year I participated in what is called a quarter-away program where I worked for the senior citizens center for the quarter and received academic credit. I worked full time.

Before I started this program I didn't have any idea what problems confront the elderly. I didn't even know they had legal problems. Since working at NSCLC for the last 3 months I probably have gained more expertise in the area of elderly law than most practicing attorneys now possess.

TRAINING LAWYERS CONCERNING PROBLEMS OF THE ELDERLY

The focus of this inquiry is legal representation of the elderly, and to me the investigation cannot be complete unless you consider the way lawyers are being trained now and what the law schools can do in the future to help train lawyers who are able to handle the problems of the elderly.

I would suggest that ideally in the first year of law school the required first-year courses point to the fact that the elderly have problems. They seem to point to the fact that other groups have problems but the elderly get forgotten. In a contracts course, instead of discussing the unconscionable contracts that door-to-door salesmen sell to poor people at inflated rates of interest, they could discuss the unconscionable contracts of nursing homes where property is essentially taken away from the patients in repayment for the services they receive at the nursing home.

After the first year, if students are interested in pursuing the subject, there should be an elective course, offered on a regular basis, dealing specifically with legal problems of the elderly that these students can take to learn more about the breadth of the problem. Then

* See prepared statement, p. 69.

for those who are really interested there should be clinical programs, such as a walk-in elderly legal services office manned by students who would give advice and referral. In this way the students could get much more detailed experience with these problems.

Another idea would be an interdisciplinary program, receiving a degree not only from the law school, but for another year of study in conjunction with the School of Social Work or, if there is one at the school, a Department of Gerontology, a degree as an elderly law specialist, so that you would enter the legal field as an expert in legal problems of the elderly.

The result of this kind of an approach would be very positive. Not only would more doors be opened to the young graduate who now looks at the job market and sees poverty, but the elderly would have the kind of experienced help they need. They could go into a law office and at least the attorney would know that they do have a problem and maybe could refer them to another attorney who handles these problems exclusively or more than that attorney. Now an elderly person could go into a law firm and give them his problem and hear them say, "I'm sorry, I don't know how to help you, go see legal services or something."

Not only for myself, because I think I have received a certain amount of experience, but mostly for my classmates, I would urge national aging organizations and individual citizens to write to law schools and ask for these kinds of courses, and also some national organizations could offer to fund clinical programs so that the students could have practical experience in this area.

Senator TUNNEY. Ms. Arron, I want to thank you.

[The statement referred to follows:]

PREPARED STATEMENT OF DEBORAH ARRON

My name is Deborah Arron. I recently completed my second year of studies at UCLA School of Law and am currently employed by the National Senior Citizens Law Center (NSCLC). My employment with NSCLC stems from UCLA's "quarter-away" program whereby a student serves as a full-time law clerk for a governmental or other non-profit organization and earns twelve units of credit for the practical experience. Prior to my encounter with NSCLC, I was totally ignorant of the special legal problems of the elderly. However, in the short time I have been at NSCLC, I have probably gained more expertise in elderly law than most practicing attorneys possess. This assertion, appalling without elucidation, is more outrageous in light of the fact that the elderly are the largest and fastest-growing minority group in America. What is more important, their legal problems, being especially unique and complex, are made more compelling when the urgent nature of time for an aged person is remembered. The legal problems of the elderly are intimately involved with their daily life: income maintenance, housing and health. Thus, a legal profession unaware of the legal needs of the elderly is essentially ignoring a large portion of society.

Part of the reason for this disheartening situation is the inadequacy of law school curriculum. At this time, no California law school offers a lecture course or seminar on the legal problems of the aged. UCLA is the only school directly involved in a clinical program dealing specifically with the elderly. No school recently has offered a course on the large government agencies meting out benefits to the aged. It is not surprising, then, that after a legal education which disregards the elderly, an attorney is not only unable to advise competently the few elderly clients who do solicit legal counsel, but is unaware of the existence of large numbers of senior citizens who know not where to turn.

LAW SCHOOLS—CURRICULUM

This statement is not meant to accuse the law schools of willful and malicious deletion of course material dealing with the elderly. The law school curriculum reflects the interests of the student body and demands of the public, as well as the legal community's own notion of what a law school education should be. In the last ten years, law school curriculum has been altered to accommodate exactly those influences. For example, racial and sexual minority, environmental, communication and juvenile law areas have been incorporated into the typical elective course of study. Unfortunately, however, the law schools have been slow to add elderly law to their curricula; they have not had to respond to the same demand that produced other substantive additions. The students are unaware of the pressing need for such a program and so they have not requested its institution. The aging organizations, though advocating other reform, are also not registering complaints to the law school. This is because they are generally unaware of what a legal education, and thus a lawyer, can do to remedy their situation. Finally, the individual senior citizen is preoccupied with the daily chore of living. What interest has he or she in demanding such nebulous reform as a more complete law school orientation? Thus, it is up to the law school administrators themselves to initiate the necessary programs.

What can be done first is to incorporate references to the aged into the first year instruction model. For example, in a course on constitutional law, age discrimination could be discussed; or the use of unconscionable contracts by some nursing homes could be raised in an introductory contracts class. This approach would reach the entire student population by at least alerting it to the existence of a legal viewpoint peculiar to the elderly. In addition, the typical advanced course on administrative law should refer to procedure under the social security or veterans administrations rather than teaching the course from an FCC or ICC stance, agencies that involve relatively few citizens directly. A final, and most valuable change, would be the institution of a course entitled "Legal Problems of the Elderly". Those students who would become interested in the area from reference in first year classes would have the opportunity to learn in more depth the specific legal issues that constantly confront aged persons. This type of course could be a prerequisite to further practical experience in elderly law, participation in a clinical program. The end result of this progression would be the creation of a law school graduate versed in the fundamental legal problems of the elderly and prepared to enter the legal profession to gain further expertise.

The modification of the law school teaching plan to include this suggested evolution of course matter dealing with the elderly could have an important snowballing effect. Today, one often hears it said that too many lawyers are being churned out of law school, and are being flooded out of the job market. This is an inaccurate observation. There is not an excessive number of attorneys being trained, but too many being trained with limited backgrounds and consequently, limited options. The corporate and other traditional legal areas have absorbed enough attorneys to handle their admittedly huge needs. However, many in the public remain without representation; most notably, the elderly. A law school education, if broadened to touch upon all areas where the law enters and lawyers are needed, would result in an even distribution of legal counsel throughout our society. Attorneys, then, would not be called ambulance chasers or con artists, trying to hustle up business; they would be fulfilling a genuine need in the community. In this way, every new attorney would be educated to serve a valid purpose, not to compete for a few treasured positions.

At this time, the elderly are hesitant to seek advice from attorneys. This has been substantiated by a NSCLC survey which found that although the elderly are 20 percent of the poor, they constitute only six percent of legal service clientele. It is no wonder that they are reluctant if past experience has shown few attorneys to possess the expertise necessary to help them. The institution of a modified law school curriculum could have more significant results than would be expected. Not only would the number of attorneys versed in and willing to handle legal claims of the elderly increase, but so also would the number of persons aware of the neglected though compelling situation of the elderly in America today.

SUPPLY OF LAWYERS—DEMAND FOR LEGAL SERVICES

Senator TUNNEY. I am interested in the question of trying to find a better mechanism to connect the supply of lawyers and the demand for the legal services. You know much better than I do that probably 50 percent of the law students graduating from law school around the country this year will not be able to find jobs practicing law and earning a living at it because there just aren't enough jobs available. Yet we have a tremendous demand for legal services and a tremendous need, so we have perhaps done about as poor a job in matching up the supply with the demand in the field of legal services as in any particular area of the economy. Maybe in the medical area it is as bad, but I don't know. I am not sure it is as bad as a result of recent activities of the Congress and the State legislatures around the country. I was wondering if you had any thoughts about the way we could legislatively assist in making this connection between supply and demand.

Ms. ARRON. Legislatively it might be difficult. Some law schools are federally funded or receive some Federal funds, some are State run schools, like UCLA, and perhaps something could be put into their governing regulations or statute or whatever requiring a course on the elderly to be taught. But in law schools now the curricula reflects certain influences: first of all, the administrator's own ideas of what a law school education should be, which is the very traditional business-oriented approach, and then it reflects student demands. But students don't really think about being old. I mean, I am not old and it seems like a long way off, but—

Senator TUNNEY. It is a movable feast, believe me. I still think of myself as young, but I am about to be 40 within the next few days, and this is a milestone for me.

Ms. ARRON. Anyway, the students are not demanding courses on the elderly. They are demanding courses on poverty law, communications law, environmental law, public interest sorts of areas, so the curricula is going to reflect those influences.

Then the law school should reflect the public need, but how does the law school know what the public need is unless the public makes itself heard. I think the elderly are one of the quieter segments of society, until recent years, so that is why I would suggest that national aging organizations or the media, could emphasize that the elderly do have legal problems, enough legal problems to provide a lot of jobs to make emphasis in the area worthwhile for young law students and graduates.

Senator TUNNEY. One of the reasons I asked you that question is that the UCLA Dean, Murray Schwartz, your dean, and Tom Erlich, the Dean of the Stanford Law School, are preparing right now a report to this committee on ways that we can, through law school education, provide that connection between demand for legal services and the supply of legal talent, and I thought that you might, if you had any thoughts, speak to Dean Schwartz about it.

Mr. NATHANSON. I spoke to Dean Schwartz, if I might interrupt. There is presently no course in law on the elderly at UCLA, although USC is going to teach one in January of 1975.

Senator TUNNEY. I am convinced that one of the things that is absolutely essential is that we have Federal and State programs to encourage prepaid legal group plans. Also, we need an extension of legal clinics and we need to have law students providing their talents, too, for these clinics. I left law school in 1959, and the one thing that I remember about my legal training, and I went to what I considered to be a very good law school, was that as far as teaching me to think in a logical fashion, it was excellent, but in preparing me to practice law, it was terrible. I was told when I went to my law firm after graduation from law school that it would take about 1 year to make me an adequate lawyer. So if you could have law students participating in these clinics and giving advice and learning at the same time they are giving the advice, it could not help but be of benefit to senior citizens, it would also be of great benefit to the students themselves.

Mr. NATHANSON. Could I add one comment?

Senator TUNNEY. Yes. The reason I mentioned this is because Debby Arron is doing it.

Ms. ARRON. But I would like to do more. This was a great program for me for this quarter, but I didn't have any client intake and I missed that, so next year I am going to be involved in the type of program where I will have clients. But they won't be elderly clients because UCLA doesn't have a program that deals with elderly people. That is the type of program that needs to be instituted.

GREATER USE OF LAW STUDENTS

Senator TUNNEY. I have several law students in my office who are working away from law school in order to develop their backgrounds and they provide a tremendously valuable service to me. I can say that a lot of our legislation is drafted by the law students in my office. They stay only for a quarter, sometimes two-quarters, and then go back to law school, but they have been very valuable, and the price is right, too.

Ms. ARRON. Unfortunately.

Mr. NATHANSON. I can say the same thing. Debby has really been invaluable to us.

Senator TUNNEY. Just as an example of what law students can do, I introduced in the Senate yesterday a bill to provide that federally funded mass transit projects be accessible to the handicapped and, of course, one-third of senior citizens are handicapped. At the present time we have a situation where people in wheelchairs can't get through turnstiles, they can't, in case of airline terminals, sometimes get to the plane readily. We have the problem in the case of subways in certain cities or elevated people-movers getting people up and down to where they would embark and disembark from the vehicle, and buses present great problems for many handicapped people. So what we introduced was legislation that where there were any Federal funds that are used for mass transit that there would have to be funds made available to make that mass transit project accessible to the handicapped. Just as one example, BART System cost \$1½ billion. They spent \$8 million making it accessible to handicapped, you know, having elevators and things of that kind. This work was done by law students and they were the ones who

did all the intellectualizing of the problem. They were the ones who actually drafted it. We had to get some assistance from the legislative drafting service in Washington to put it in final form, but law students did the job.

I introduced the bill with Senator Alan Cranston as a cosponsor. I am confident that we are going to be able to get some very good action on it. I think we ought to be in a position to move within the next 3 or 4 months in the various committees of the Senate.

I might just say that one of the law students who was responsible is Harvie Shapiro, right over here—indicating—who helped draft it, and who happens to be handicapped himself. If it hadn't been for his initiative, I don't think the subject would have ever occurred to me, but he had the initiative and he helped us get the legislation put together.

Do you have anything you would like to say further?

Mr. NATHANSON. Just the one comment on law schools and clinical programs. There is something also within faculty members at law schools and the way in which they view clinical programs. I think we might have to change that before clinical programs expand. It is a second-rate kind of operation to a lot of full-time faculty members and, therefore, you know, that filters down to students and to their interests. It's sort of something they do to assuage those people who want to do some good things every once in a while, and I would like to see clinical programs more fully integrated and those who teach clinical programs upgraded within the university and law school setup.

Senator TUNNEY. I appreciate it.

I would just make a few closing remarks.

I think the testimony today has been excellent. I think we have learned a lot. And I think we have a good hearing record to take back to Washington and one that will provide a blueprint for action on several fronts.

LAWYER FEES—No. 1 LEGAL PROBLEM

One point I think that came out loud and clear today is that the No. 1 problem that senior citizens have in finding adequate legal assistance is that they lack the income to be able to pay a lawyer \$45, \$50, \$60 an hour that lawyers charge in order to be able to maintain their incomes. But there are other problems, as well. Many older Americans fear reprisals if they should initiate a proceeding; large numbers are unaware of services which are available to them; others are denied access to legal assistance because of mobility restrictions. I think what we have heard today has amply demonstrated that the legal needs of the elderly have reached crisis proportions and are demanding needed attention.

It also seems clear to me that a new special emphasis approach is urgently needed if we are going to come to grips with the problem. One priority area is to upgrade legal assistance under the Older Americans Act. There should be earmarked funding for developing the cadre of legal and paralegal help necessary to respond to elderly citizens' unique and growing problems.

It also seems that legal assistance through the act should not tie in with any means test. Although the poor and minorities should

still be first priority, we have to recognize that others have problems as well. Thus we can avoid the situation where persons slightly above the threshold fall inbetween the cracks because they are too rich for legal services but do not have enough money to afford an attorney.

S.O.S., Senior Opportunities and Services, is another program which can strengthen legal representation for older Americans. Within the next 2 or 3 weeks the Senate Labor and Public Welfare Committee will act on a proposal to transfer S.O.S. to the Administration on Aging. At that time I am going to offer an amendment to improve services and consumer counseling on behalf of senior citizens.

TAX AID FOR ELDERLY

I am also very much impressed by the tax aid program which now benefits more than 100,000 elderly taxpayers. But the need is much greater, and that is why I have joined forces with Senator Church on legislation to provide a permanent program for this tax aid. For many older Americans the tax form is a labyrinth with numerous linguistic booby traps, and it's no wonder that millions now needlessly overpay their taxes. I would hope that when I get back to Washington that we will be able to move rapidly with the consideration of this legislation, and maybe even be brought up within the next several weeks. I will speak to Senator Church to see if we can get it brought up within the next several weeks.

Finally, I want to notify the senior citizen organizations that are here today that the Committee on Aging has prepared a checklist of itemized deductions to protect older Americans from overpaying their taxes and my district office will soon make a distribution of this pamphlet to senior citizen centers throughout the State, as well as local offices on aging. Even though the April 15 filing deadline is past, this checklist is still timely, because elderly taxpayers can submit an amended return, Form 1040X, to claim deductions overlooked in prior returns. In fact, these items can be recovered with interest at 6 percent up to 3 years after the original returns were filed. Those organizations that are represented here today, I would hope that if you don't receive this checklist within the next few weeks, if you would contact my office either here in Los Angeles or in Washington, we can make available to you as many of the forms as you feel that you can utilize with your membership, but we will make them available to you hopefully without your request.

Before closing I would like to extend my heartfelt thanks to all the witnesses who were with us today. We deeply appreciate the fact that you came and spent as much time as you did in pre-. We have heard 16 witnesses in a period of 3½ hours, and we would not have been able to do that if you had not thought your statements out in advance and limited your testimony, and for that I am deeply grateful.

We will adjourn this hearing for today, subject to the call of the Chair. I would like to thank the members of the audience who came and who listened, for being so polite, cooperative, and for having attended. Thank you.

[Whereupon, at 12:50 p.m., the hearing adjourned.]

APPENDIXES

Appendix 1

LETTERS AND STATEMENTS FROM INDIVIDUALS AND ORGANIZATIONS

ITEM 1. LETTER FROM EDWARD H. DRALLE, CHAIRMAN, THE AFFILIATED COMMITTEES ON AGING OF LOS ANGELES COUNTY; TO SENATOR JOHN V. TUNNEY, DATED JUNE 14, 1974

DEAR SENATOR TUNNEY: The Affiliated Committee on Aging of Los Angeles County, Inc. is comprised of 41 local committees on aging and 28 information referral centers. Local committees serve the 78 communities throughout the county. The committees on aging are staffed and administered by volunteers provided at the grass-roots level. They are the bridge between private and public organizations of senior citizens. These groups help themselves by working for legislation favorable or considerate of the aged. These also serve to disseminate among themselves needed information as to available services and where and how they may make use of these services. The committees' on aging most valuable function is to serve as a coordinating mechanism for all the senior citizen programs in their communities.

As chairman, I would like to bring to your attention many of the problems that still plague the elderly in Los Angeles County. The critical areas where the elderly need assistance are:

(1) Income: Many of the elderly poor are still eating dog food because they do not have sufficient income to buy any better food.

(2) Housing: It has been reported that, within the 10-block area between Wilshire and Alvarado in Central Los Angeles, there are 10,000 elderly living in substandard housing, many of whom have burned up in rooming house fires within the last few years.

(3) Affordable transportation: Adequate transportation facilities for the elderly just to go to their doctor, do the shopping or on occasion maybe visit a friend is most important and certainly Los Angeles County lacks this needed and vital service.

(4) Health care: Anyone in later years requires more medical attention than at any other time in his life. It's certainly appalling to me that in this nation of ours, with all our technological knowledge that the best that we can do with the Medicare program is to only treat the illness after it has been diagnosed. The biggest failure on the part of Medicare is not providing adequate multi-phasic health screening to prevent the costly cure and the human suffering. Early detection of certain diseases could prevent hospitalization and institutionalization, such as detecting glaucoma, preventing blindness and detecting diabetes and thus eliminating the need for the amputation of limbs, and many more.

SUPPLEMENTAL SECURITY INCOME PROGRAM

Our institutions, such as the Department of Public Social Services here in Los Angeles County, as well as the Social Security Administration, in administering welfare programs or even simple Social Security benefits or Medicare, do their best to take away any dignity that these individuals might have away from them in the processing of, interviewing, evaluating and determining

eligibility for any services they might render. I think one major step forward to returning dignity to the low-income elderly was the instituting of Supplemental Security Income to be administered by the Social Security Administration.

Locally, in Los Angeles County, the Social Security Administration was totally unprepared for the conversion, resulting in thousands of people not receiving their checks at the first of this year and currently the workload in the offices throughout the county is overwhelming and they are unable to function and process current claims as well as new applicants. Most individuals that applied for Supplemental Security Income in January still have not heard whether they are eligible or ineligible. Many individuals who were converted the first of January were dropped from the program for one reason or another and have not had their benefits restored. Both incidents deny the individual the needed funds to survive and most of all they are unable to receive their Medi-Cal cards. Not only are we denying these individuals food and, in many cases, much-needed medical attention, but we are jeopardizing their lives and limbs by failure to provide them with their Medi-Cal cards. Even at best an individual with a Medi-Cal card finds it difficult to receive medical services because of the inherent problems in attempting to administer the program. Doctors and pharmacists suffer large financial losses. Through the government's lack of organization and awareness we are literally denying services for the very people Congress intended to help.

Currently the State of California supplements the SSI program with SSP funds and, as of this date, the guidelines for administering the program that went into effect January 1 have not been written. The state's computer at this point is unable to produce the badly needed care for those who have been determined to be eligible for it.

Currently the interpretation of SSI benefits by SSA leaves much to be desired—such as ruling that the blind over 65 receive benefits only for the aged and do not qualify for benefits to the blind. Processing a disabled person takes 4–5 months.

SSI-Alert was a 3-month project and failed badly nationally. Locally, in Los Angeles County, it has at its best done only a partial job. Those hard-to-reach individuals that the Alert program was designed to contact are most difficult to get to and certainly in the time allotted for organizing and implementing such an undertaking in 90 days; basically, utilizing volunteers for the outreach portion of the project is impossible to accomplish in that short period of time.

The following ten items outlined below are the problems that you should be aware of concerning Supplemental Security Income.

(1) Ruling that blind and over age 65 are classed as aged only and not blind because elderly can be expected to go blind eventually is cruel and unrealistic. (Do not know whether this is ruling or part of SSI law.)

(2) SSA is inept, undermanned, and the help often cruel, abrupt, with lack of compassion for the very elderly who have difficulty in communication, thinking, responding and expressing themselves. Many have no knowledge whatever of SSI.

(3) Disability claims are hopelessly bogged down, not only within the SSA, but within the agencies in the State of California. We have been reliably informed that one of the state agencies is receiving 300 more applicants per day for disability than they are able to process. This person (with DPSS) has reported that only three of her cases filed since January 1 have been passed in the first five months. Many of the disability cases are extreme hardship cases. Within one day one volunteer reported three threatened suicides. (Senator, you are probably aware that suicide among the elderly has increased considerably.) The volunteer then resigned in disgust.

(4) Social workers from large medical establishments are able to obtain prompt information from SSA, at least on over-65 applicants, relative to in-patients so that they can be assured of adequate supplementary payments on hardship cases. Individual applicants cannot obtain this service and are unable to obtain the \$100 cash payment that is supposed to be allowed to them.

(5) Some SSA claim clerks have informed applicants of ineligibility with assets over \$1500, based upon some income on hand which was required for food.

(6) It is taking at least 3-4 months for Medi-Cal cards to reach even those applicants over age 65, who are most readily processed by SSI.

(7) Since there is no way of assuring applicants that they can become eligible for SSI benefits the months their liquid assets are within the eligibility requirement, it is difficult to convince those who are trying to exist at poverty income levels to spend-down to the rate of SSI eligibility to become eligible.

(8) Door-to-door volunteer work is extremely difficult to obtain. On a community-wide basis, it might be possible to secure mobile teams to cover selected areas.

(9) The County of Los Angeles, which has more persons already on the SSI program than at least 47 of the 50 states, has a terrific potential for additional applicants with the rising cost of living.

(10) Changes in SSI benefits and adjudication of legislation is required to keep SSI recipients abreast of cost-of-living changes. Some adjustment should be made in California on assets as \$2250 is only 5 months of benefits for full recipients (at \$440 per month).

We are herewith attaching additional information and correspondence received from our regional offices during the course of Project SSI-Alert.

Your consideration in the foregoing matters is greatly appreciated.

Sincerely yours,

EDWARD H. DRALLE, *Chairman.*

[Enclosures]

HOLLENBECK HOME FOR GRACIOUS RETIREMENT LIVING,
Los Angeles, Calif., May 28, 1974.

MR. EDWARD H. DRALLE,

Project Director, SSI-Alert, 611 South Kingsley Drive, Suite 304, Los Angeles, Calif.

DEAR MR. DRALLE: It was good to talk to you on the telephone the other day concerning the Supplemental Income problem of Hollenbeck members.

I am enclosing a copy of the letter I sent to the local Social Security office, together with the Directive from Social Security showing their interpretation of the problem. I am also enclosing a list of our members who applied for SSI, together with their Social Security numbers.* The five names that are starred have received a similar letter to the one I am enclosing showing that they will receive \$6 from SSI.

Anything that you can do for us in this regard will be most appreciated, not only by Hollenbeck Home, but a number of other non-profit Homes in California.

Sincerely,

WILLIAM A. HEIDMAN,
Administrator.

MAY 8, 1974.

Re Supplemental Security Income.

MR. PAUL GIMPELSON,
Monterey Park, Calif.

DEAR MR. GIMPELSON: I am writing to you regarding our recent telephone conversation concerning Supplemental Security Income (SSI) for certain members of Hollenbeck Home. When we talked, you indicated that there was some question regarding the eligibility of certain of our members due to an SSA Program Circular that you had received.

I have reviewed the circular (No. 8, dated March 5, 1974), and I believe that the questions regarding eligibility are based upon an apparent misconception regarding Hollenbeck Home's Entrance Agreement. I have enclosed a copy of our Entrance Agreement for your information.

Please note that Hollenbeck Home is not a "life-care" home that provides a life-care contract in consideration of a transfer of the member's assets. On the contrary, we make no attempt to determine what amount a member must pay in order to receive care for the rest of his life. We have no desire to gamble on the life expectancy of our members. Rather, as a charitable home for the elderly, our purpose is to provide the best possible care for our members consistent with all available financial resources, including public assistance funds.

Upon entering Hollenbeck Home, a member assigns his assets to our trustees. As mentioned above, these assets may be of any amount, and we

*Retained in committee files.

have taken members under certain circumstances who had no assets at all. Section 1 of our Entrance Agreement provides that a member's assets are amortized at the rate of \$10 per day to cover care costs. Section 9 gives the trustees the right to dismiss a member at any time for good and sufficient cause upon 90 days notice. Therefore, if a member voluntarily or involuntarily leaves the Home after remaining for 90 days, \$900 would be deducted from the member's assets, and the balance would be refunded.

The key provisions of our agreement that relate to SSI are Sections 5 and 6. As you can see, those provisions expressly contemplate the fact that certain of our members will, at some point, become eligible for public assistance. This eligibility arises when the member's assets have been completely amortized in covering his or her care costs. At that time, the member is to apply for public assistance, and the member specifically agrees to take whatever steps are necessary to receive such benefits. Those benefits are then paid to the Home pursuant to the Entrance Agreement in order to continue to cover the member's care costs.

It is my understanding that the maximum SSI monthly benefits amount to \$303.00 (\$283, plus an unearned income allowance of \$20). This corresponds to our monthly care costs (\$10 per day for 30 days). Therefore, there is no excess between the value of the support and maintenance provided to a member on SSI, and the amount of the SSI benefits. Thus, there is nothing to be deducted from the SSI benefits as a result of monthly "Unearned Income" in excess of \$20.

Frankly, I do not believe that Hollenbeck Home could continue to provide the current level of care unless our Entrance Agreement contemplated the availability of public assistance for our members of limited financial means. Furthermore, I do not think that we would be carrying out Mrs. Hollenbeck's wishes if we only accepted members with sufficient financial resources to pay the full cost of a life-care contract.

As I mentioned to you when we spoke on the telephone, I am very concerned that the criteria set forth in the SSA Program Circular may cause serious problems for other homes for the aged that are committed to providing life-care for their residents. Therefore, I hope that the criteria can be changed in recognition of this problem. Regardless of the overall social merits of the existing criteria, however, it seems to me that Hollenbeck Home's members do qualify under them for full SSI benefits.

If you have further questions, we would be glad to discuss them with you and your staff.

Best regards.

Sincerely,

WILLIAM A. HELDEMAN, Sr.,
Administrator.

SUPPORT AND MAINTENANCE PROVIDED BY OR PAID FOR BY A STATE OR POLITICAL SUBDIVISION OR OTHER AGENCIES AS INCOME FOR PURPOSES OF THE SUPPLEMENTAL SECURITY INCOME PROGRAM

I. BACKGROUND

Many questions have been received asking whether support and maintenance provided by or paid for by a State or political subdivision and furnished to individuals residing in nonpublic institutional or group living arrangements may be excluded from countable income as assistance based on need in accordance with section 1612(b)(6) of the Social Security Act. The volume of such questions indicates a need for clarification of policies in this area. This circular answers these questions.

The living arrangements addressed exclude those situations in which eligibility for SSI payments is precluded because the individual is an inmate of a public institution.

II. INDIVIDUAL RESIDING IN AN EDUCATIONAL INSTITUTION

There are a number of applicants and recipients residing in schools for the blind or disabled and who, because they are residing in public educational or technical training institutions for purposes of securing educational or vocational training, are not "inmates of a public institution." (See Claims Manual

section 12211(c).) For individuals in this category, the usual standard of payment is applicable. Support and maintenance provided the individual and any grants, scholarships, etc. not used for tuition and fees (See Claims Manual section 12363ff) are unearned income to the individual, to which the only exclusion applicable is the \$20 monthly exclusion under section 1612(b)(2) of the Social Security Act. This would also be true in the case of private educational facilities.

If a child under age 21 in an institution (other than an inmate of a public institution) customarily returns to the home of a parent (or spouse of a parent) weekends, holidays and/or vacation, he is considered to be living with his parent (or spouse of a parent). This would, therefore, be a case in which the income and resources of the parent (or spouse of a parent) are deemed to the child. In that situation, contributions by the parent or his or her spouse to the support and maintenance of the child at the school are not counted as income to the child. However, if the value of the support and maintenance exceeds the amount of such payments, the difference between the value of support and maintenance and any payment by the parent (or spouse of a parent) is unearned income to the child and the \$20 exclusion may be applicable.

Some students at public educational institutions for the deaf and blind receive, in addition to the support and maintenance provided the entire student body, a monthly stipend based on need from the State's welfare department. In a situation of this kind, it is necessary first to ascertain the program under which these payments are made.

The Social and Rehabilitation Service has informed State welfare agencies that an individual who meets the requirements for both Aid to Families with Dependent Children and the supplemental security income program, may not be paid for the same months from both programs, but must select the program from which he wishes to receive benefits. Where an individual has received AFDC benefits for months for which he is later determined eligible for SSI benefits, therefore, his AFDC payments will be considered as unearned income and will result in a dollar-for-dollar deduction in the SSI payments for the months affected.

The payments based on need made by the State (or a political subdivision), if they are not AFDC payments, may be assistance payments based on need if they meet the criteria of section 1616(a) of the Social Security Act; i.e., they are paid regularly, in cash, directly to the recipient or his payee, and are in supplementation of title XVI benefits. State and political subdivision payments, based on need but which do not meet the criteria of section 1616(a), and payments based on need from Federal agencies and from nongovernmental agencies made to applicants and recipients of the SSI program are income based on need and reduce the SSI payment dollar for dollar in accordance with section 1612(b)(2).

III. FOSTER CARE AND GROUP HOME ARRANGEMENTS

In foster care or group home (congregate facilities) arrangements, the individual requiring care is usually placed with the foster parent or group home operator by an agency of the State or political subdivision or a private social agency which has financial responsibility for the individual. The agency makes payments to the foster parent or operator of the home for the support and maintenance and services furnished to the individual. Where such payments are made by a State or political subdivision to the provider of care as the representative payee for the individual they may, if they meet all the criteria of section 1616(a) of the Social Security Act, be excluded from income as assistance payments based on need under section 1612(b)(6). However, where in such a case, the State or political subdivision is the payee for benefits or other periodic payments of the individual (such as his social security benefit, VA pension, income from a trust, etc.), such benefits and payments are still counted as unearned income to the individual and may not be excluded.

When the State or political subdivision makes payment to the provider of care as reimbursement for support, maintenance and services furnished the recipient, these are then payments to the provider and not income to the individual. The support and maintenance furnished the individual in consideration of such payment is unearned income to the individual, except to the extent monies otherwise charged to him as income were used to pay the pro-

vider. Thus, if the State or political subdivision of the State making such vendor payments is payee for the individual's social security benefit which is used as part payment to the provider, only the excess value of the support and maintenance over such benefit may be charged as unearned income. The \$20 exclusion is applicable.

IV. INDIVIDUALS IN RETIREMENT HOMES

People who enter retirement homes, old-age homes, etc., do so under a number of different contractual arrangements as to payment. A common arrangement is for the individual to prepay for his care, by assigning all of his resources to the home, and for the home to obligate itself to care for him for life. In such situations the value of the support and maintenance provided is income to the individual regardless of the prepayment. There were also individuals in retirement homes who had need for and received, under title I, X, XIV or XVI, assistance payments from a State or political subdivision. These payments were used by the individual to pay the home for support, maintenance, services, etc.. Individuals in retirement homes under these circumstances may have been converted to SSI rolls. They may now also be receiving assistance from the State or political subdivision in supplementation of SSI benefits; such assistance would be excluded from the individual's countable income. For individuals in this situation, if the value of support and maintenance received is greater than the payments made to the home, the difference would be unearned income to the individual subject to the \$20 monthly exclusion.

Some retirement home financial arrangements, where the individual may not have prepaid in full for his care, require the individual to pay monthly to the home his social security benefits and other benefits, pensions, etc., he may receive. In this case also, if the value of support and maintenance received is greater than the payments made, the difference is unearned income to the individual and subject to the \$20 monthly exclusion.

There may be other situations where a State or political subdivision is paying a retirement home for the support, maintenance and services furnished one or more inmates because of the inability of the individuals to pay for their care. In an arrangement of this kind, the payments by the State or political subdivision would be vendor payments. The value of support and maintenance, exclusive of services, would be unearned income to the recipients, subject to the \$20 monthly exclusion.

ITEM 2. STATEMENT BY ANDREA SHERIDAN ORDIN, EXECUTIVE DIRECTOR, LOS ANGELES COUNTY BAR ASSOCIATION

The Los Angeles County Bar Association is a voluntary Bar Association of 11,550 lawyers and judges in Los Angeles County. The Association and its members are involved in a variety of projects and programs designed to assist and educate the legal community and, more importantly, the many communities which the lawyers serve.

As the July, 1974 report by the Los Angeles County Grand Jury shows, the problems of the elderly, in Los Angeles County, both the poor and non-poor are great. The problems of housing, adequate medical care, adequate food and nutrition are substantial and need not be itemized to these committees.

However, in the area of legal services, we believe that the scope of the problem is just beginning to be identified. Affordable legal services provided to the elderly are necessary, not only to proceed through the maze of bureaucratic regulations relating to Social Security, S.S.I., and Medicare, but to deal with the myriad of everyday problems, such as landlord-tenant law, consumer contract law and domestic relations.

As already pointed out in the statement of Paul S. Nathanson, Executive Director of the National Senior Citizens Law Center, the destitute elderly have been provided with certain mechanisms to receive legal services. However, as also pointed out in that statement, much more needs to be done in order to make those mechanisms adequate.

Similarly as noted in that statement, even more needs to be done to assist the non-destitute elderly.

The Los Angeles County Bar Association provides a Lawyer Referral Service utilized primarily by the residents of the Los Angeles County area. We have enclosed a copy of the rules of the Lawyer Referral Service.* Pamphlets are prepared and distributed to the public, and by August 1, 1974 we expect to have copies of the revised pamphlet printed both in Spanish and English.

The Service is advertised in all telephone classified directories in the County. The advertisements list a phone number to call from nine A.M. to four-thirty P.M., Monday through Friday, as well as the address of the Association.

More than eight hundred lawyers serve on the various panels of the Service. The application requires the lawyer to list his or her experience, and interest in certain fields of law. The Association maintains certain minimum standards that a lawyer must fulfill before the lawyer may be listed on a particular panel for the general public.

In addition to providing lawyers who expressed an interest in a particular area of law, the Service also provides referrals based upon geographic area. The referral may be made over the phone, which eliminates the necessity of additional travel, for the prospective client.

The Service, when requested, also provides referrals to those attorneys proficient in languages other than English. In the first quarter of 1974, the Service made 175 such referrals where the prospective client had requested a Spanish speaking attorney.

The Service also requires that lawyers listed maintain minimum malpractice insurance and agree to arbitrate through the Los Angeles County Bar Association any possible fee dispute.

Although the Service requires that the fee for the first consultation should not exceed \$15.00 for the first half an hour or \$25.00 for the full hour; many times the initial consultation fee is not billed by the lawyer at all.

Categories which might be of particular interest to the elderly are the Administrative Law Section, Debtor-Creditor Relations, Domestic Relations, Insurance, Landlord-Tenant, Personal Injury and Property Damage, Probate-Conservatorship, Guardianship, Social Security and Veterans. In the quarter of January 1 through March 31, 1974; 5,406 referrals were made through the service.

Of that total, there were only 86 referrals in the Social Security and Veteran's category. Due to the additional communication between concerned agencies in the County, provoked in part by these Hearings, we believe we will be able to assist in additional referrals in this category. We have provided certain organizations, such as the National Senior Citizen's Law Center with information so that it may advise non-indigents of the availability of our Service.

The necessity for an active "modest means" panel has been a primary concern of the Lawyer Referral Service in the past year. Such a plan would be of assistance not only to those elderly on a fixed income, but to those thousands of Los Angeles County residents who do not qualify for Legal Aid, but cannot fully afford legal services.

The present "modest means panel" which is described in the rules attached, operates entirely under agreement with referring outside agencies such as Legal Aid. The intention of our Lawyer Referral Service is to expand such service to reach a much wider group of persons.

The plan presently under consideration, which we hope would be approved by the State Bar of California, would provide that those with "modest means" would pay lawyers' fees on a monthly payment basis without interest, the monthly payment not to exceed \$25.00 per month. Such a program would assist many persons who are not indigent, but who are living on fixed, small incomes.

In addition to the Lawyer Referral Service, our committee, lawyers for Housing, partially funded by the ABA and the City of Los Angeles, has spent the last year and a half of its operation devoted to providing mechanisms by which low-cost housing can be provided for residents of Los Angeles.

As we know, one of the primary needs of the elderly, and those living on small, fixed incomes is to be provided with adequate housing. Although the studies and proposals of Lawyers for Housing thus far has not resulted in

*Retained in committee files.

concrete results, the project is continuing and we hope to be able to report success at a later time.

Thank you for the opportunity to address these remarks to your committees. We feel confident that with the continuing communication which was generated in part by these hearings, that programs can be initiated to make present and future sources of assistance to the elderly more meaningful.

ITEM 3. STATEMENT OF PAUL ROSENTHAL, FISCAL DIRECTOR OF THE JEWISH HOME FOR THE AGED OF LOS ANGELES

The Jewish Home for the Aged is a 62 year old non-profit organization caring for 450 aged men and women whose average age is 84 years.

To quickly understand the problem created by Public Law title XVI—92-603—1612(a)2(A) dealing with Social Security and Supplemental Income for the Aged, Blind and Disabled, the following is a reproduction of the best copy of the controversial section 6070 B from the S.S.I. handbook.

S.S.I. Handbook—Section 6070 B.

B. NONMEDICAL INSTITUTIONS

1. *Private Retirement Homes.*—When a claimant resides in a private retirement home which may be affiliated with a fraternal organization, church, or private non-profit organization and has some or all of the cost of board and room paid for him by others, you must determine the dollar value of that support and count it as unearned income. In such a situation where charges are made based on the ability to pay, the amount counted will be the difference between what the claimant pays and the amount the retirement home charges those capable of paying. If someone is making payments on behalf of the claimant the amount of these payments represent income available to him for support and is counted in full.

If the retirement home does not make a charge to the residents but meets its obligations through donations and other means, the value of room and board may be determined in one of two ways. Contact should first be made with the manager, a trustee, or other knowledgeable source for a reliable estimate of the per capita costs of operating the institution.

Example: Costs of operating the Hutchinson Retirement Home for the most recent year are determined to be \$45,000 for foodstuffs, labor, utilities, repairs, and other out-of-pocket expenses. The average number of residents in the Home is 67. The per capita cost is \$671.60 a year. A claimant residing here would be charged \$55.97 a month for the value of maintenance if furnished by the Home.

An alternative to this method is to determine the value of board and room by the table of values in SSIH 6073. The table should be used *only* if there is no available reliable evidence on which to determine per capita costs.

It is unfortunate that Section 6070 B., creates an inequitable situation and a crisis for thousands of non-profit HOMES who services hundreds of thousands of aged residents.

To put the finger on the issue, consider the two types of HOMES—profit making Home and the non-profit Home.

The Proprietary (profit venture) Home

Because of the limited income from Social Security, S.S.I., and Welfare, the motivation of profit forces the owner to restrict, reduce or keep costs below income. In all cases, the total services are minimal and limited to support and maintenance, depending upon the owners profit demand.

The Non-Profit Home

These Homes are created and maintained by Fraternal, Church, Religious, Labor Union, Schoolteacher organizations, etc., to care for the indigent aged. The considerations are not for profit, but to maintain best possible health, happiness and pleasure during the Golden Years. This broad concern goes far beyond limited support and maintenance and includes medical supervision, proper diets, entertainment, social and religious activities, arts and crafts, events, etc. Because there is no thought of profit and the cost of extended

care is far greater than government income, it is vital to secure community contributions to augment government funds.

Where is the fairness, or justice when Section 6070 B., permits full payment to the resident receiving minimum service in a profit making Home, but restricts the funds to the indigent aged residing in a non-profit Home.

Remember the questioned indirect funds contributed by the community, that help to provide the care for the aged, are funds that never pass on, or through the individual. It is so far fetched to consider these funds as a liability, that it becomes unreasonable and unrealistic.

Most non-profit facilities receiving government funds indirectly, with the full support of community charity solicitation, still operate at a loss. Remove the government support as interpreted in Section 6070 B, and most will have to cease operations, due to lack of funds. This unrealistic reduction of operating funds cannot be replaced by the community, who now are supporting to the maximum of their ability.

In fact such restriction of funds must either:

Force the non-profit Home to reduce all services to minimum "support and maintenance" and operate on a break even basis or,

Force the non-profit Home to close its doors, forcing hundreds of thousands of indigent aged to be thrown upon the cities, states and federal government. The savings secured from 6070 B, will be but a small amount compared to the gigantic additional cost in dollars, construction, housing, distress and conflict that will result. This monumental job and the far greater cost involved will create havoc to the needy, the community, the tax burden, the government agencies, etc., etc.

Section 6070 B. has created many inconsistencies—to name a few:

This law became effective January 1, 1974. All individuals on the State rolls receiving Welfare, or Old Age Security funds were automatically placed on and picked up by the Social Security Administration to receive Supplementary Security Income, starting January 1, 1974. This included all residents living in non-profit Homes.

Residents of non-profit Homes who became eligible for Supplementary Security Income, after January 1, 1974, regardless of application, or acceptability, have not been accepted and are not receiving S.S.I. These same qualified residents who became ill, cannot receive Medi-Cal (Medicaid) because they lack a S.S.I., or O.A.S. number.

A resident who automatically qualified January 1, 1974, and has been receiving S.S.I. funds and became ill, had to be hospitalized, or placed in a skilled nursing unit—qualified for Medi-Cal (Medicaid) and received Medi-Cal during the period of illness, when recovered and taken off of Medi-Cal cannot qualify and is not accepted back on the S.S.I. rolls.

Such inconsistencies must be in violation, contrary to law and create a double standard. Surely, if former O.A.S. recipients are acceptable, even temporarily—then all rejected individuals can and should be acceptable until the law is changed, or clarified.

Every government administrative department head is sympathetic—in fact are in full realization of the crisis created and want to correct the injustice. The remedy is a change in the law, eliminating 6070 B, but in the meantime, it would be a fallacy to create a needless monster, a blizzard of paperwork, or manpower to find a temporary simple solution, or a temporary administrative stop gap expediency.

There is a great concern about the implementation and the feasibility of the highly questionable Section 6070 B. This presents an *untried* approach that hits at the very foundation of charity and the huge task concerning the needed care of indigent aged men and women.

What about the people? Aged men and women who were and are good citizens—worked hard and could not build the necessary nest egg—now indigent and dependent on assistance, living at, or below the poverty level? They depend upon the government agencies and the community for their safety, health, subsistence and well being.

We are just one of the thousands of facilities in the country—all non-profit—all operating at a loss—all dependent upon the community for funds to operate, even at a loss. Non-profit facilities that care for indigent individuals, cannot continue without the full financial support and commitment due each indigent individual.

Therefore, it is imperative that Section 6070 B., is deleted from Public Law 92-603; 1612(a) (A), as quickly as legislation is possible. In the meantime, immediate administrative action be taken to streamline a method of simplification to accept all qualified S.S.I. applications of residents of non-profit HOMES. Of course, the effective date of acceptance and approval should be the date original application was filed and S.S.I. payment be made retroactive as of that date.

This sums up into a strange inconceivable irony. All governmental agencies at all levels, including licensing, inspection, etc., are striving for and insisting on better housing, improved care, deeper feeling, greater consideration, improved health and nutritional food, bringing a better life to the aged that live in retirement homes. Yet, here is a situation where the individual is penalized for receiving best care. To reduce, or limit care, would be a step backward and a disservice to all.

ITEM 4. STATEMENT SUBMITTED BY ROBERT G. BECKER, ACTING DIRECTOR, LEGAL SERVICES, THE STATE BAR OF CALIFORNIA

More than two million Californians are over 65. A majority of these people rely upon Social Security payments for their financial support. Most of them cannot afford the services of private attorneys, and although local legal service offices and a few special projects such as the National Senior Citizens Law Center located in San Francisco are providing service to our elderly poor, their resources and staff are not sufficient to meet the need.

The elderly poor have not received their fair share of services from the legal service offices funded by the federal government. Although 20% of the poor are elderly, they represent only 6% of the legal service offices' clientele. In addition, the age group over 65 is the fastest growing population group—20% versus 12% for the general populace—and is the only age group to show a rise in the proportion of its members below the poverty level.

There are many reasons why elderly citizens are not receiving their fair share of legal service assistance. All of the offices are overburdened and have been forced to make priority decisions in the handling of cases that result in the more vocal and more mobile classes getting more service. Many of the problems of elderly citizens require more time and energy, including home visits to the shut-ins, than the local programs feel that they can afford. Some promising attempts have been made in California to resolve this dilemma, including the experimental Senior Citizens Legal Service Office of Santa Cruz and the proposed Senior Citizens Legal Service Commission (Assembly Bill 311). But they are not enough.

The State Bar of California maintains that a strong, independent and adequately funded National Legal Service Corporation which is authorized to support and administer "Backup Centers" represents the most efficient and practical response to the legal problems of all of our poor citizens. Even now, however, it appears that the entire concept of "Backup Centers" is under attack and that the pending Corporation bill will not authorize their continued funding. If such authorization is indeed eliminated, funds must be provided from elsewhere to continue the support of the four centers now located in this State (Western Center on Law and Poverty, National Health & Environmental Law Project, National Housing & Economic Development Law Project, and the National Senior Citizens Law Center (since they all provide valuable assistance to legal service attorneys working with our elderly poor in the proper resolution of their legal problems).

We cannot depend, however, upon the legal service projects alone. The private bar and law schools must assume greater responsibility for helping to improve the availability of legal service for our elderly citizens. Every local bar association should consider, if it has not already done so, establishing a standing committee which will investigate and periodically review the problems of the elderly citizens in their area and then make recommendations as to how these problems can be resolved. Law schools in California should also be encouraged to design courses that deal with the particular problems of our elderly citizens and re-assess all of their courses to insure that the problems of our elderly citizens are covered in courses other than "Estates, Probate and Taxation."

We all must take steps to discover what we can do on our own to assist elderly citizens in resolving their legal problems. The problems of the elderly are, in the final analysis, our problems.

ITEM 5. LETTER FROM LEO HASKELL, PENSION COMMITTEE, SAN DIEGO TYPOGRAPHICAL UNION NO. 221, SAN DIEGO, CALIFORNIA; TO DAVID AFELDT, CHIEF COUNSEL, SENATE COMMITTEE ON AGING

DEAR SIR: Thank you for the opportunity to present my statement for the record.

I represent members of the San Diego Typographical Union, Local No. 221 employed by the Union-Tribune Publishing Co., a division of the Copley Press, Inc. of La Jolla, California. The company publishes two daily newspapers, the San Diego Union and The Evening Tribune.

In September, 1973 the company moved its operations to a new production facility containing the latest developments in printing technology. Prior to the move, the company announced its goal of cutting the composing room work force by fifty percent. This figure is not unrealistic, and there is a probability of additional drastic lay offs within a few years as more of the available technology is put into operation. Though the first phase of the transition has been somewhat rough, the attrition of personnel is now proceeding at a steady pace, and the projected goal may be reached in a matter of months.

Our problem in gaining legal access arose from my attempts to protect the pension rights of the hundred or more persons whose jobs are being terminated. The median age of this composing room work force is about 52 years, many are over 60, and the prospects of future employment in the industry are rather bleak. The Union-Tribune Retirement Plan, a company-financed plan (Labor Dept. File No. WP-059244), has a vesting requirement of 15 years continuous service. The employees laid off will forfeit their accumulated service credits of up to 10 years each, with an average of about five years. I brought this problem to the attention of the Pension Trust Division of Internal Revenue Service, and have made other inquiries. The information I have gathered indicates that a layoff of this magnitude could be classified as a partial termination of the pension trust within the meaning of Int. Rev. Reg. 1.401-6(b). If such a determination is made, the rights of all these employees to their accrued benefits would be fully vested.

Since the IRS is not disposed to act in our behalf, and there is no administrative remedy under present law, our only recourse is to litigation, probably through a class action lawsuit.

This is our dilemma. The circumstances of the case make it impossible to finance such an action. Obviously, the attorney in a class action would derive his fee from the monetary recovery, but in this case there is no monetary recovery. A successful outcome would simply reinstate rights to a future benefit which, for many of the persons involved, may never be realized. These individuals, faced with a jobless future, are not likely to risk heavy legal expenses; and they are not eligible for publicly funded legal assistance, since they cannot be classified as indigents.

We are compelled to acquiesce in an injustice, because justice, regrettably, is priced beyond our reach.

I did discuss this matter with company officials almost a year prior to the move. They refused to heed my recommendations.

The Copley Press itself supplied an unintentional ironic touch to this story, They recently granted an award to one of their writers for a crusading series defending pension rights of employees of another company: and, to cap it all, paraded their beneficence through a full-page ad in a trade publication (see enclosures). The editorial department doesn't seem to know what the administrators are doing.

Sincerely yours,

LEO HASKELL, *Pension Committee.*

[Enclosure]

[From the Evening Tribune, Feb. 21, 1974]

SERIES SPURRED PENSION REFORM

BORREGO SPRINGS.—Jane Glenn Haas, assistant news editor and an investigative reporter for the Elgin, Ill. Courier-News, has won the 1973 James S. Copley Ring of Truth Award for Enterprise Benefitting All Copley Newspapers.

Mrs. Haas was selected for an outstanding investigative reporting job which resulted in pension reform legislation which has passed the U.S. Senate and is awaiting action by the House.

Also named for awards in feature story and interpretive-news report categories were six members of the Copley News Service staff.

The awards were announced today near the conclusion of a conference of executives of 15 daily Copley Newspapers of California and Illinois, held in La Casa del Zorro resort.

Awards were given in competition among three divisions of Copley Newspapers and the Copley News Service bureaus.

The divisions were for Copley newspapers in Illinois, San Diego, Sacramento and Torrance and in the Los Angeles area.

Mrs. Haas, a staff member of the Elgin, Ill. Courier-News intermittently since 1959 was honored for a series of stories that began in the Courier-News Jan. 4, 1973.

The stories reported that Elgin National Industries of New York planned to liquidate an estimated \$30-million pension fund built up by the former Elgin National Watch Co., which the New York group succeeded. The liquidating firm would have acquired about \$12 million in surplus pension funds if successful.

Mrs. Haas and the Courier-News hammered at the case for eight months, publishing numerous articles and editorials which were cited repeatedly at federal hearings and congressional sessions.

The result was a \$5.5 million settlement in favor of the pensioners, with each receiving flat payments of \$500 to \$1,000 in addition to their pensions.

In selecting Mrs. Haas for the top award, the judges said her efforts and those of her newspaper "will have a salutary effect on the welfare of pensioners throughout the nation, which is in the highest tradition of the greatest honor the Copley Newspapers can bestow upon a member of its organization."

The Copley News Service award winners were:

—Penny L. de Nahum, South American correspondent, Best Foreign Interpretive-News Report.

—Edward A. Neilan, of the Washington bureau, Best Foreign Feature Story.

—Benjamin Shore, Washington bureau, Best Domestic Interpretive-News Report.

—Frank J. Macomber, San Diego bureau, Best Domestic Feature Story.

—Joseph H. Brooks, Sacramento bureau, Best Regional Interpretive-News Report.

—Rick Orlov, Los Angeles bureau, Best Regional Feature Story.

Also winning awards were the Wheaton, Ill. Daily Journal, and John G. Whyte of the Joliet, Ill. Herald-News, who tied as recipients of the James S. Copley Special Award for Outstanding Contribution to Our Nation's Bicentennial.

The San Pedro News-Pilot led all competition with 11 awards. The Evening Tribune led its division with nine and the Joliet Herald-News led Illinois newspapers with seven.

The Daily Journal of Wheaton, smallest of the competing newspapers, tied for third in the overall competition with six awards.

[From the Editor & Publisher—Apr. 6, 1974]

EDITORIAL GUMPTION:

ELGIN DAILY COURIER-NEWS HITS PENSION LIQUIDATION SCHEME,
BENEFITS PENSIONERS LOCALLY, THROUGHOUT U.S.

It was unusual: a \$12 million excess in the employee pension fund of the old Elgin National Watch Co. Now new management planned to liquidate the fund. But former employees were outraged at the share offered them.

The Elgin (Ill.) Daily Courier-News tied into the story with some 1500 column inches of words and pictures, over a span of eight months. Result: intense attention from the company, the U.S. Congress and readers.

In the end some 1000 pensioners won more than twice what was first offered. And new measures were added to the U.S. legislation on pension-plan reform.

It seems to us the editorial gumption of the Courier-News has served pensioners both in its own community and throughout the nation.

Appendix 2

STATEMENTS SUBMITTED BY THE HEARING AUDIENCE

During the course of the hearing a form was made available by the chairman to those attending who wished to make suggestions and recommendations but were unable to testify because of time limitations. The form read as follows:

DEAR SENATOR TUNNEY: If there had been time for everyone to speak at the hearing on "Improving Legal Representation for Older Americans," in Los Angeles, California, on June 14, 1974, I would have said:

The following replies were received:

JUANA D. SORIA, LOS ANGELES, CALIF.

Please look into the qualifications for eligibility workers in my seven years of working with senior citizens problems I have found many cases where there really was the need for help, yet they were not eligible according to D.P.S.S. workers, but when I took a Public Health Nurse to the home of the recipients, the need was proven and help was given, but this takes a long time and not everyone can do that and I hope you can do something in this field.

MAJOR ROBERT L. FRITZ, C.M.H., LOS ANGELES, CALIF.

From a practical experience: as a disabled person on Social Security that complete honesty on physical examination such as 11-1 could not get a neuro-examination to head wounds, or multiple sclerosis (which I did win in court—Fritz v. HEW—65:1000-iH and 71-204T-H25) HEW) a complete medical award. It appears that if one agency V.A. or county holds even on obvious bone scars, reflexes, and skin scars, they will not give a claimant his due physical exam what I won as a Pro-Per, only a trained lawyer could do it—what pays the claimant, duplicate medical exam if fraud runs the course? I think a review team should report to false claims and heavy fines allowed to all professional services, I for one pay medicare—I cannot pay legal aid nor should the worker pay duplicate procedures.

WILDA TILLMANNS, GLENDALE, CALIF.

There must be better media development to communicate all the services available to the aging. This would include how they can obtain legal aid now and after this hearing, all the improved ways they can obtain legal representation. There must be developed written, radio, television and film programs and material that will educate the elderly, the youth—everyone about the concerns, the needs, the problem of the elderly. A major thrust should be given now as education is so severely needed. Then an ongoing pro-

gram should be created. Newspaper columns should be written for "toss away" paper as well as for "subscribed to" papers. A brochure and/or monthly written communication in many languages where needed should be distributed throughout the United States containing all pertinent information. Private, public, educational, religious, health, industrial institutions should all join in to educate the people now. The coordination is possible. The development is possible. The funding of such an undertaking could be possible. I would like to be in on the execution and implementation and creation of such a project.

As Church Women United Southern California, Southern Nevada Communications chairperson, I am most interested in seeing this educational and communication thrust be set into operation. I am also United Church of Christ chairperson for their Task Force on Aging in Southern California. I am also secretary to the Southern California Interfaith Coalition on Aging and we are also interested in seeing that the public is better educated.

And, Senator Tunney, someday soon I would like to speak with you about the great problem of oppression of the Christians in Korea. I was one of 48 U.S. women in Church Women United to travel in February to Korea, Taiwan, Japan, Hong Kong to hear about their great needs, to understand their great concerns. The Christians are being arrested and execution by the firing squad is the new decree if found guilty of "anti-government activities" is what some face.

—Our government must educate the people to what it's all about in Korea and Taiwan.

—Economics, Politics and Religion are all involved.

If ever you can set aside a period of time to talk to this subject I would appreciate a call. Carnella Barnes was also on this causeway '74 Trip. As was a Priscilla Baca of Los Angeles.

Thank you for your attention to this request.

ALISON K. GILBERT, LOS ANGELES, CALIF.

Having been contacted by the National Senior Citizens Law Center located in Los Angeles telling me of a program conducted by them to train senior citizens to become para-legal interviewers and screeners for the elderly, I immediately arranged for 25 senior citizens to attend. Upon completion of this training and after plans were begun for a para-legal center to be operated out of Pepperdine University utilizing these persons, we were informed by the National Senior Citizens Law Center that, due to certain internal problems and lack of cooperation from Los Angeles Legal Aid offices, they would be unable to support us with legal assistance. Being without lawyers but with 25 trained senior interviewers, we were forced to seek other areas through which to assist older persons.

It is evident, however, that there is a dire need for legal assistance for the elderly and quite distressing not to be able to utilize our trained para-legal interviewers to perform a service very much needed.

I strongly recommend that the Legal Aid offices be encouraged to cooperate with programs designed for the low-income elderly and/or funding made available for the establishment of such projects.

CLAUDIA CURRY^YHILL, LOS ANGELES, CALIF.

Pepperdine University has 25 Senior Citizens who have been trained as para-legal and legal interviewers. They were trained by the National Senior Citizens Law Center. However, our interviewers and para-legal are only offering advocacy services in the areas of social problems that affect Senior Citizens, because we were unable to make any type of arrangement for our Senior Citizens to be placed into Legal Aid offices of Los Angeles. We tried every avenue possible, to work with Mr. Charles Tapel (?) of the Los Angeles Legal Aid Foundation to no avail. We received little or no assistance from

the National Senior Citizens Law Center, to help secure this alliance. They apparently can only make recommendations to the Legal Aid Offices but are lacking in influence or power.

Senior Citizens need more than a referral service. An agency should be developed that will act as an advocate for Senior Citizens not only in legal matters but also in helping them secure the services that they are entitled to under existing county, city and Federal Program, utilizing Senior Citizens as para-legal, interviewers and advocates.

Due to lack of support and funding even the advocacy services that our trained personnel are now offering will soon be deleted.

We regret that the valuable and expensive trained received by our Senior Citizens cannot be utilized.

LADY WILLIAMS, LOS ANGELES, CALIF.

Why when I get a raise on Social Security they take \$11.00 of Supplementary Social Security and I only get \$255.00 a month. Rent is \$144.00 and food is higher and higher.

ANITA ANSHEN, LOS ANGELES, CALIF.

As a representative of a national organization interested in education and volunteer services, I would support the establishment of an agency for legal aid to the elderly, walk-in centers, and training in law schools for aid to elderly.

I would also like to recommend extension of the SSI-Alert Program to find those eligible for SSI.

Thank you for making available the report on these hearings to those attending the hearing.

JANET J. LEVY, SACRAMENTO, CALIF.

One of the most neglected and almost "unthought" of elderly persons regarding legal services, is the resident of a residential, nursing, or board and care facility. Although Mr. Perkovich has referred to the difficulty of attorneys having to travel 40 or 50 miles to a convalescent home, there should be some method of serving a group of residents in need of legal aid.

At the statewide hearings on Nursing Home and Alternative Care, witness after witness referred to the lack of legal and social services within the institution. With the advent of California's new citation system of nursing home violations, there might develop a method of recognizing and reporting the need for legal services to the local health department.

MEL HENRY, LOS ANGELES, CALIF.

Legal services should be guaranteed to all senior citizens as a matter of right. This means that these services should be available to meet all the conceivable legal problems of the elderly. That is, there should be a wide range of services. These services should be available, accessible, continuous and non-discriminatory. These services should be provided in such a manner that the dignity of the client is preserved; potential or existing fears are reduced and allayed; retaliatory actions by the accused, be they landlord, employer, service delivery personnel, etc., be realistically discouraged and stopped.

All this must be contingent on the fact that the public is adequately informed.

ESTHER SANFORD, LOS ANGELES, CALIF.

I have a complaint about the SSI which when the Social Security gave increase the SSI decrease their payment. There have been discussion about

the problem but nothing so far to correct it. I have another problem it concerns my husband. Medicare is suppose to pay the premiums. Since Jan. 1973 the Social Security has been taking payment for Medicare from my husband checks. I received a letter from Mr. Ellis Murphy, Director, Dept. of Public Service. It stated that the State of California will pay for his premium for her Medicare benefits. He would be mortified by Social Security he would receive retroactive premiums from Jan. 1973 to present time. Jan. 1974, I received credit for four months. What about from June 1973 to December 1973. (Social Security—Edmund Sanford 547-12-5396)

EMMA A. BUSH, IHM SENIOR CITIZENS FRIENDSHIP CLUB, LOS ANGELES, CALIF.

DEAR SENATOR TUNNEY: If there had been time for everyone to speak at the hearing on "Improving Legal Representation for Older Americans," in Los Angeles, California, on June 14, 1974, I would have said: Thank you for a most profitable morning.

Please give the Senior Citizens a TV Program on U.S. Government. The question to Mr. Woods, "Could you with a earning capacity of \$181.00 per month interpret the Blue Book?" tells me that you understand the Senior Citizens are short on information and education, possibly due to lack of Child Labor laws and compulsory school attendance laws.

Sybil Brand, County Youth Program has a TV Program which reaches the students. I believe a similar program, possibly third grade level, could be arranged for Senior Citizens so that they would understand the working of the City, County, State and Federal Government.

True, the city does have a Senior Citizen Education Program. That is fine for all those who are able to get to a class but what of those Senior Citizens who are unable to get to class for either health or transportation reasons. (I have contacted the City Schools Senior Citizens Director but without success so far as serving all Senior Citizens.)

Senior Citizens are proud and will not be embarrassed in a group by how little education they have but the TV Program would reach every living room where the Senior Citizen is at ease.

Such a program would interest more than Senior Citizens; hence, create an interest in returning the government to the Constitution of the United States, also the citizenry would be better able to scrutinize issues and candidates before casting their vote. (June 4, 1974 less that 50% of the electorate voted).

If the Senior Citizens Program in Los Angeles City Schools, is subsidized by Federal funds, may I suggest that all funds be withdrawn at once and the present program be replaced with a National TV Program in education for all Seniors?

If UCLA is using Senior Citizen Education funds for the program to which Miss Aaron referred "Clinical work with Seniors" but Miss Aaron will work with other Senior Citizens, please change the clinical work to Senior Citizens or withdraw the funds which are being used for other than Senior Citizen Clinical work.

PERSONAL: I am in need of help on medical question. Please suggest some.

E. LUTTRELL, LOS ANGELES, CALIF.

The rise of rents when Social Security is raised. Doctors only interested in large medical bills because of Medicare, and I don't have Medi-Cal.

Food high prices, gas, lights, eye glasses that are not satisfactory. It was nice being in the meeting and your concern for the elderly. Most housing for seniors are dilapidated, or the new structures are small; cost from \$128 up per month.

Appendix 3

PREPARED STATEMENT
of the
AMERICAN ASSOCIATION OF RETIRED PERSONS
and the
NATIONAL RETIRED TEACHERS ASSOCIATION
on
TAX RETURN PREPARATION PROBLEMS OF THE ELDERLY
. submitted to the
SUBCOMMITTEE ON THE TREASURY, U.S. POSTAL
SERVICE AND GENERAL GOVERNMENT
of the
COMMITTEE ON APPROPRIATIONS
U.S. SENATE

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PART ONE

INTRODUCTION

In April of 1970, allegations of widespread federal income tax overpayments by the aged were investigated in hearings before the Special Committee on Aging of the U.S. Senate. With conclusive, scientifically-gathered evidence either in support or in refutation of these allegations apparently unavailable, the Committee's investigation determined the probable validity of such allegations by focusing upon an identification of the aged taxpayer and an identification of the nature and dimensions of his tax return preparation problems. The Committee's findings and its recommendations to the Internal Revenue Service for administrative improvements designed to take into account the unique status of the aged taxpayer were published in a report filed in December of that year.¹

Among other things, the Committee found that upon reaching age 65, the taxpayer is confronted with an entirely new and complicated set of tax rules, with which he is not prepared to contend successfully by his preretirement tax return preparation experience. While impelled by the complexity of the tax laws and reporting forms to seek outside professional assistance, the Committee found that the aged taxpayer cannot afford commercial assistance and cannot fully utilize assistance provided at Internal Revenue Service offices because such assistance is not designed to accommodate his particular needs. Left, therefore, to his own devices in the

¹S. Rept. No. 1464, 91st Cong., 2d Sess. (1970).

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preparation of his federal income tax return, the Committee found that the labyrinth of calculations, procedures, and schedule transfers necessary to complete form 1040, and the general unsuitability of that form, its supporting schedules and explanatory materials to the limitations of the aged taxpayer, probably resulted in erroneous reporting and failure to take full advantage of legitimate tax benefits. To the extent that an aged taxpayer erroneously overreports income or fails to avail himself of tax preferences intended for his benefit, the aged taxpayer tends to overpay his federal income taxes.

Since the aged taxpayer has less dollars of income but is likely to find each dollar he does have difficult or expensive to report and assess for tax purposes, the Committee made a number of constructive recommendations. Funds should be provided and the numbers of I.R.S. training personnel should be augmented to facilitate the expansion into a national program of Tax Assistance by the Elderly for the Elderly (Tax-Aide) which had been operating successfully as a pilot project for two years and had amply demonstrated the need on the part of the aged taxpayer with limited resources for such assistance and the effectiveness of older persons in helping other elderly taxpayers with their tax problems. The Committee also recommended the establishment of a simplified retirement income credit schedule to facilitate full utilization of this tax benefit and urged that the schedule clearly indicate the taxpayer's option of having the Internal Revenue Service compute

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the amount of his credit. To further assist the aged taxpayer in availing himself of other legitimate tax benefits, the Committee also recommended that more common itemized deductions be listed as line items on schedule A. Finally, the Committee u r g e d that the Internal Revenue Service accelerate its efforts to provide technical assistance to private pension plans to assist the aged taxpayer by computing the taxable portion of his pension or annuity -- items of income which are difficult to report and which are relatively unique to him.

It is a reappraisal of the aged taxpayer, and the nature of his tax return preparation problems in the light of administrative and statutory changes and improvements during the course of the past four years that are the subjects of this Prepared Statement. Part Two is addressed to the identification of the general characteristics of the aged taxpayer category, a determination of the number of persons included therein, and the nature of the external problems confronting, and personal limitations inhibiting the aged taxpayer in his attempts to comply voluntarily with the income reporting and tax self-assessment requirements of the law. Part Three catalogues some of the progress which has been made in tax administration with respect to the aged since the 1970 hearings before the Special Committee. Having concluded that tax administration improvements and statutory changes have provided some measurable relief to the aged taxpayer during the intervening four years, Part Four recommends a variety of means for dealing

with the residue of the tax preparation problems of the aged, with special emphasis on tax preparation assistance counseling and the form of counseling best suited to the needs of the aged.

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PART TWOTHE AGED TAXPAYER AND THE NATURE
OF HIS TAX PREPARATION PROBLEMSI. THE AGED TAXPAYER IN 1971²

The aged taxpayer is unique. The problems confronting him as he attempts to comply with the reporting, self-assessment and payment requirements of the law with respect to the federal income tax are also unique. As derived from Table I³ on the following page, it is clear that the total number of returns (both "taxable" and "non-taxable") filed by the aged for 1971 represent a minority (8.7 million out of a total aged population of 21 million or approximately 41 percent)⁴ of persons age 65 and over.

It may be argued, on the basis of Table II⁵ which appears on page 7, that the aged taxpayer category should be considered to comprehend only 5.8 million persons (66 2/3 percent of 8.7 million) since only 4.5 of their 6.8 million returns were "taxable" returns. However, the remaining 2.9 million represented by the 2.2 "non-taxable" returns should also be included since these persons are confronted with the same return preparation and filing problems even though they may have no tax liability. Even while allowing for this expansion of the aged taxpayer category, it is still clear that the aged who are taxpayers or at least filers of tax returns,

²1971 is the last year for which comprehensive data is available. See Dept. of Treas. (IRS), Individual Income Tax Returns: Statistics of Income 1971, Pub. #79 (December 1973), (hereinafter referred to as Dept. of Treas., 1971 Statistics of Income).

³Reproduced in part from Dept. of Treas., 1971 Statistics of Income, p. 185.

⁴U.S. Census Bureau, Current Population Reports, Series P-60, #86, (1971).

⁵Reproduced from Dept. of Treas., 1971 Statistics of Income, p.186, supra note 2.

TABLE I

RETURNS WITH AT LEAST ONE TAXPAYER AGE 65 OR OVER:
ADJUSTED GROSS INCOME, TOTAL DEDUCTIONS, EXEMPTIONS,
TAXABLE INCOME, AND TAX ITEMS BY MARITAL STATUS, SEX, AND AGE

[All figures are estimates based on samples--data are in thousands]

Marital status, age exemptions by sex of taxpayer	Number of Returns	Adjusted gross income
	(1)	(2)
All returns, total.	6,761	55,265,581
Joint returns of husbands and wives, total	3,847	37,731,364
Both 65 or over	1,909	18,629,417
Man 65 or over; woman under 65. . . .	1,647	16,178,292
Woman 65 or over; man under 65. . . .	291	2,923,656
Separate returns of husbands and wives, total	125	657,216
Men	77	408,191
Women	47	249,025
Returns of heads of households, total .	125	949,635
Men	47	373,726
Women	78	575,909
Returns of surviving spouses, total . .	22	101,234
Men	7	60,173
Women	14	41,061
Returns of single persons, total. . . .	2,643	15,826,131
Men	670	4,397,537
Women	1,973	11,428,594

TABLE II
ALL RETURNS AND RETURNS OF TAXPAYERS AGE 65 OR OVER,
1969, 1970, AND 1971

[All figures are estimates based on samples -- data are in thousands]

Item	1969	Percent change 1969 to 1970	1970	Percent change 1970 to 1971	1971
	(1)	(2)	(3)	(4)	(5)
All returns, total. . .	75,834	-2.0	74,280	+0.4	74,576
Taxable	63,721	-6.9	59,317	+1.0	59,916
Nontaxable.	12,113	+23.5	14,962	-2.0	14,680
Returns of taxpayers. age 65 or over, total	7,181	-3.7	6,913	-2.2	6,761
Taxable	4,637	-4.0	4,452	+1.2	4,507
Nontaxable.	2,544	-3.3	2,461	-8.4	2,254

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are a minority within their own age group (8.7 million out of a 1971 total of 21 million persons age 65 and over or about 41 percent) and a small minority within the total population (8.7 million out of a total of 203.66 million persons or about 4.3 percent).

According to the data of Table II, only 7.5 percent (4.5 million out of a total of 59.9 million) of "taxable" federal income tax returns filed with respect to 1971, were filed by aged taxpayers.⁶ When it is considered that the aged in 1971 constituted 10.3 percent of the population (21 million out of a total population of 203.66 million)⁷ the percentage of taxable returns filed by them is disproportionately small.

The 1971 statistics with respect to "adjusted gross income" (AGI)⁸ serve to define further the uniqueness of this minority taxpayer and explain the reason for the disproportionately small percentage of taxable returns filed by him. As Table III⁹, on the following page, indicates, of the \$673.6 billion of AGI reported in that year, only 8.2 percent (\$55.3 billion) was attributed to the aged taxpayer. While comprising 10.3 percent of the total population, the aged had only 8.2 percent of total AGI available to them.

⁶Since the aged filed a disproportionately high percentage (approximately 15 percent) of "non-taxable" returns (as a means, for example, of obtaining refunds of wages and salary withheld), the use of the figures with respect to the total number of returns filed would diminish the disparity between population percentage and tax return filing percentage that is otherwise clearly established.

⁷U.S. Census Bureau, Current Population Repts., Series P-60, #86, (1971).

⁸I.R.C. §62.

⁹Reproduced in part from Dept. of Treas., 1971 Statistics of Income, p. 184, supra note 2.

TABLE III
COMPARISON OF ALL RETURNS AND RETURNS OF TAXPAYERS AGE 65 OR OVER:
SOURCES OF INCOME OR LOSS AND TAX ITEMS
[All figures are estimates based on samples -- Data are in thousands]

Item	All returns				Returns of taxpayers age 65 or over		
	Total		Percent adjusted gross income		Amount	Percent of	
	Amount					adjusted gross income	income for all returns ¹
Adjusted gross income less deficit	673,619,046		100.0		55,265,581	100.0	8.2
Sources of income:							
Salaries and wages (gross)	564,967,294		83.9		18,752,079	33.9	3.3
Business or profession net profit less net loss	32,038,344		4.8		2,611,230	4.7	8.2
Farm net profit less net loss	2,187,999		0.3		223,774	0.4	10.2
Partnership net profit less net loss	10,802,991		1.6		1,230,549	2.2	11.4
Sales of capital assets net gain less net loss	13,155,001		2.0		4,102,497	7.4	31.2
Dividends in adjusted gross income	15,671,048		2.3		8,001,301	14.5	51.1
Interest received	24,731,456		3.7		10,847,075	19.6	43.9
Rent net income less net loss	2,587,400		0.4		1,965,972	3.6	76.0
Royalty net income less net loss	858,886		0.1		391,483	0.7	45.6
Pensions and annuities in adjusted gross income	9,292,720		1.4		6,176,781	11.2	66.5
All other sources, income less loss ²	6,167,799		0.9		1,298,764	2.4	21.1
Statutory adjustments ³							
Taxable income	8,847,885		1.3		336,105	0.6	3.8
Income tax after credits	413,986,534		61.5		31,542,621	57.1	7.6
Additional tax for tax preference	85,239,774		12.7		7,884,535	14.3	9.2
Total income tax	169,462		<0.05		35,134	0.1	20.7
Total tax liability ⁴	85,409,236		12.7		7,919,670	14.3	9.3
	87,469,042		13.0		8,112,616	14.7	9.3

¹Includes adjustments and tax items listed in stub of table.

²Includes Small Business Corp. net income less net loss, estates and trusts net income less net loss, sales of property other than capital assets net gain less net loss, State income tax refunds, alimony, other income or loss, and income type not specified.

³Includes sick pay exclusion, moving expense deduction, employee business expense deduction, and self-employed retirement deduction.

⁴The sum of income tax after credits plus self-employment tax, tax from recomputing prior-year investment credit, additional tax for tax preferences, and social security taxes on tip income.

Table IV¹⁰, on page 11 indicates that, of the 27.2 million returns filed for 1971 and reporting adjusted gross income of less than \$5,000, 12.9 percent (3.5 million) were filed by aged taxpayers. The percentage of low-income returns filed by the aged is therefore disproportionately high even in comparison with the total percentage of filed returns attributable to their segment of the population (6.76 million out of a total of 74.6 million or approximately 9 percent -- see Table III). Table IV also shows that, of the 21.4 million 1971 returns disclosing AGI of more than \$5,000 but less than \$10,000, only 8.6 percent (1.8 million) were filed by aged taxpayers and of the 14.6 million reporting AGI of over \$10,000 but under \$15,000, only 4.7 percent (.7 million) were filed by the aged. As AGI increases, it is obvious that the portion attributable to returns filed by the aged decreases sharply.

An examination of the AGI data of Table IV solely with reference to the aged is also enlightening. Of the 6.76 million returns filed by them, 51.7 percent reported AGI of under \$5,000 and 79 percent reported AGI of under \$10,000. On the basis of these statistical measures, it should be clear that the aged taxpayer is both a minority (8.7 million persons) and a low-income taxpayer (4.5 million reporting AGI of under \$5,000 and 6.8 million AGI of under \$10,000). With less disposable income than the non-aged taxpayer, his dollars of income must be preserved through the pursuit of more cautious and more scrupulous consumption habits. He cannot afford to be prodigal and he cannot afford to have imposed

¹⁰Reproduced in part from Dept. of Treas., 1971 Statistics of Income, p. 184, supra note 2 .

TABLE IV
 RETURNS AND ADJUSTED GROSS INCOME FOR ALL RETURNS AND RETURNS OF TAXPAYERS AGE 65 OR OVER,
 BY SIZE OF ADJUSTED GROSS INCOME

[All figures are estimates based on samples--data are in thousands]

Size of adjusted gross income	All returns				Returns of taxpayers age 65 or over			
	Returns		Adjusted gross income (less deficit)		Returns		Adjusted gross income (less deficit)	
	Number (1)	Percent of total (2)	Amount (3)	Percent of total (4)	Number (5)	Percent of total (6)	Amount (7)	Percent of total (8)
Returns under \$5,000	27,155	36.4	62,326,118	9.3	3,497	51.7	9,258,582	16.8
Returns \$5,00 under \$10,000	21,443	28.8	159,442,808	23.7	1,846	27.3	13,028,689	23.6
Returns \$10,000 under \$15,000	14,604	19.6	178,703,419	26.5	687	10.2	8,322,535	15.1
Returns \$15,000 or more	11,374	15.3	273,146,701	40.5	730	10.8	24,655,777	44.6

on him any extraordinary income expenditure burden that results in further diminution of his already limited income.

II. THE NATURE OF THE AGED TAXPAYER'S TAX PREPARATION PROBLEMS

Upon reaching age 65, the aged taxpayer is confronted with an entirely new set of federal income tax provisions which combine to make the reporting of income and the computing of tax liability distressing, frustrating, or, in the context of his other problems, even impossible. The 1971 data with respect to sources of income (See Table III) discloses that of the \$673 billion of adjusted gross income reported, 83.9 percent (\$56.5 billion) was salary and wages. While the \$18.75 billion of salary and wages reported by the aged taxpayer constituted 33.9 percent of his total AGI, this salary and wages amount accounted for only 3.3 percent of the total salary and wages reported by all taxpayers. While earned income, which, because of the form W-2, is the easiest type of income to report, is the most significant component of the AGI reported by the non-aged, its significance declines sharply once the taxpayer attains age 65.

In the case of the aged taxpayer, other forms of income, far more difficult to report and take into account for the purposes of computing tax liability, become dominant. For example, of the \$56.1 billion of investment income (including dividends, interest, net income from the sale of capital assets, rents and royalties) reported by all taxpayers, 45.6 percent of it was reported by the aged taxpayer. Of the \$9.3 billion of taxable pension and annuity

income reported by all taxpayers, 66.5 percent of it was reported by the aged.

The sharp decrease in the significance of wages and salary in the AGI reported by the aged taxpayer as compared with that component of the AGI reported by all taxpayers is demonstrated by Chart 1¹¹ on the following page. While salary and wages account for 34 percent of his total AGI, investment income accounts for 46 percent and taxable pension and annuity income for 11 percent. Not only are the provisions of the Internal Revenue Code governing these forms of income some of the more complex provisions confronting the individual taxpayer, but the task of simply reporting and computing tax liability with respect to these forms of income is a complicated and tedious procedure requiring the use of a multiplicity of supporting schedules in addition to the standard form 1040.

If not precluded because of the types of income which the aged taxpayer must report, his use of the simplified form, 1040A, which was reintroduced for use with respect to taxable year 1973, is precluded if he desires to avail himself of certain tax preferences intended by the Congress for his benefit. These include the exclusion from gross income of all or part of the gain from the sale of his residence,¹² and the retirement income credit.¹³

In order to report the forms of income which constitute most of his AGI, and in order to take advantage of preferential provisions intended exclusively or primarily for his benefit, the aged

¹¹Reproduced from Dept. of Treas., 1971 Statistics of Income, p. 185, supra note 2 .

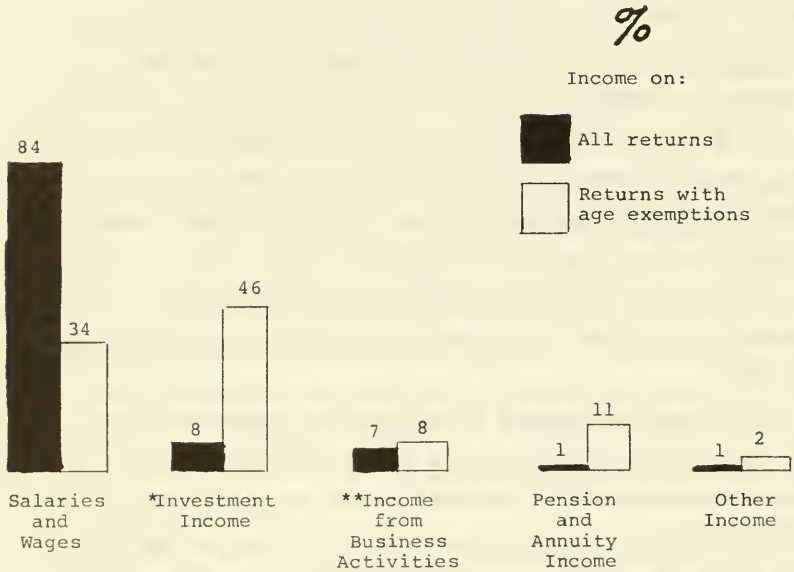
¹²I.R.C. §121.

¹³I.R.C. §37.

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CHART 1

PERCENTAGE DISTRIBUTION OF ADJUSTED GROSS INCOME:
ALL RETURNS AND RETURNS WITH AGE EXEMPTIONS



*Includes dividends, interest, and net income from sales of capital assets, rents and royalties.

**Includes net income from a business, profession, farm, partnership, and small business corporation.

taxpayer must use form 1040, and must support what is reported thereon with a series of schedules and other forms. For example, in order for him to report the partially taxable portion of a pension or annuity, schedule E must be used. In order to take advantage of the non-recognition¹⁴ or exclusion provision,¹⁵ or both, with respect to the sale or exchange of a personal residence, he must file form 2119. If eligible for the sick-pay exclusion,¹⁶ he may find it necessary to complete form 2440. In an attempt to avail himself of retirement income credit, he must deal with schedule R.¹⁷ Form and schedule preparation and mechanical calculations have become, like diminishing visual or hearing acuity, incidents of the process of aging.

The labyrinth of calculations, procedures and schedule transfers confronting the aged taxpayer, impedes his reporting of income, results in erroneous reporting, and constitutes a substantial barrier to his use of preferential provisions intended for his benefit. Since it is a well-established principle of tax law that every taxpayer is entitled to all the exemptions, deductions and credits made available to him by the Congress and has no duty to pay more taxes than are actually due,¹⁸ this complexity too often denies to the aged taxpayer what is his as a matter of right.

It is unfortunate that an attempt by Congress to provide more equitable tax treatment of different groups of taxpayers often results in the introduction of calculations of such complexity

¹⁴I.R.C. §1034.

¹⁵I.R.C. §121.

¹⁶I.R.C. §105(d).

¹⁷The I.R.S. will now compute the amount of the retirement income credit for an aged taxpayer, if he so elects and if he makes the necessary entries on schedule .

¹⁸Gregory v. Helvering, 293 U.S. 465, 469 (1935).

that the group for whom the more equitable treatment is intended is, to a substantial extent, effectively deprived thereof. The retirement income credit which was designed to relieve part of the tax burden of aged and retired persons living on taxable retirement income and to help equalize their tax treatment with that of persons receiving tax-exempt social security and railroad retirement cash benefits, was, and to a large extent still is, a good example of this. The report¹⁹ of the House Committee on Ways and Means that accompanied H.R. 8300, the bill enacted as the Internal Revenue Code of 1954, set forth the rationale for the introduction of the retirement income credit as follows:

"Under existing law, benefits payable under the social security program and certain other retirement programs of the federal government are exempt from income tax. Your committee believes that the tax-exempt status of such benefits discriminates against persons receiving retirement pensions under other publicly-administered programs, such as teachers, as well as against persons who receive industrial pensions or who provide independently for their old age. Your committee has sought to adjust this differential tax treatment by extending a limited exemption, by means of a tax credit, to all forms of retirement income. In a number of respects, the exemption provision parallels the provisions applicable to benefits paid under the social security program."²⁰

Notwithstanding the good intentions of the Congress, however, any benefit from the retirement income credit is conditioned on the aged taxpayer's confronting and successfully completing an intricate series of calculations which are purely mechanical for him because he lacks any knowledge of the reasons for these calculations. If he is at all successful in determining a credit

¹⁹H.R. Rept. No. 1337, 83d Cong., 2d Sess. (1954).

²⁰Id. at 7-8.

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amount, the probabilities are that he will be uncertain as to its correctness.

A description of the steps of the calculation through which the aged taxpayer must proceed provides a sample basis for uncertainty. In order to avail himself of the benefit of the retirement income credit, the aged taxpayer must first determine whether he has received earned income in excess of \$600 in each of any ten calendar years prior to the taxable year for which the credit is being claimed. If eligible, the aged taxpayer must then proceed through a rather intricate set of calculations using supporting Schedule R and transferring the final amount of the credit to which he is entitled to form 1040.

The amount of the credit may not exceed 15 percent of the amount of the eligible taxpayer's "retirement income" up to a specified maximum. The definition of "retirement income" in the case of a person age 65 and older, includes interest, dividends, rents, pension and annuity income, and certain bonds -- but only to the extent that such income is included in gross income in computing federal income tax liability.²¹ Since the social security and railroad retirement benefits are not included in gross income, those benefits are not considered "retirement income" for purposes of the credit computation.

Once having determined the total amount of his "retirement income," the aged taxpayer must then proceed to a determination

²¹Since the focus of the retirement income credit is not primarily age, but rather retirement status, use of the RIC is available to persons under age 65. However, in the case of such persons, "retirement income" consists only of income received as pensions or annuities from a public retirement system. See I.R.C. §37(c)(2).

of the maximum amount of retirement income which he may take into account for purposes of computing the credit. In the case of a single individual, this maximum amount is equal to \$1,524 (\$2,286 in the case of an aged married couple filing a joint return) minus the sum of -- 1) any amount received as a pension or annuity under Title II of the Social Security Act or under the Railroad Retirement Acts of 1935 and 1937, 2) in the case of an individual who has not yet attained the age of 62 before the close of the taxable year, but who is deemed to be "retired" and to have "retirement income," any amount of earned income in excess of \$900, and 3) in the case of an individual who has attained the age of 62, but has not attained the age of 72 before the close of the taxable year, the sum of 1/2 of the amount of earned income received by that individual in excess of \$1,200 but not in excess of \$1,700, plus the amount of earned income so received in excess of \$1,700. The amount of the aged taxpayer's retirement income credit will be equal to 15 percent of the maximum amount so determined or 15 percent of his actual amount of retirement income, whichever is lower. It is little wonder that, in the case of aged taxpayers who do benefit from the retirement income credit, a sense of accomplishment attends the successful completion of Schedule R.

As should be apparent, the computation of the credit is complicated by a number of factors. First, there are its attenuated analogies to social security old-age insurance, such as the earned income requirement for eligibility purposes and the mechanical earned income test for the purposes of determining retirement

status. Second, since the credit is intended for the benefit of non-social security recipients, social security income must be subtracted from the maximum amount of "retirement income" which may be taken into account for purposes of computing the credit. This "offset" feature is necessary to deny a double tax benefit to the social security recipients. Since the aged taxpayer would generally lack any understanding of these factors, his calculations are generally mechanical and prone to error.

Not only must the aged taxpayer contend with the retirement income credit and other special income reporting and tax liability computation requirements, but he must do so under physical, mental and academic limitations which may be substantial. Physical and mental impairments, such as declining visual or hearing acuity, decreasing physical mobility, and decreasing mental alertness, are often incident to the process of aging and are therefore a factor which must be taken into account when considering his tax preparation problems.²² Furthermore, academically the aged are, and are likely to continue to be, the least educated segment of the population. As of 1970, only 28.2 percent of persons aged 65 and over were high school graduates.²³

Considering the complexities surrounding the reporting of the aged taxpayer's income and the computing of his tax liabilities,

²²In the special case of the aged widow taxpayer, all of these problems are aggravated by an additional factor--lack of experience. Not only is she confronted by all of the problems which confront the aged taxpayer in general, but she usually lacks even the advantage of having had experience working with the federal income tax return prior to becoming a widow since the deceased husband probably prepared the tax return for the family.

²³U.S. Census Bureau, Current Population Repts., Series P-25, #476, 77, 99, 229.

the number of forms and supporting schedules which he must use to accomplish these ends, and his physical, mental and academic limitations, it is not surprising to discover that substantial numbers of aged taxpayers are forced to seek outside assistance in order to comply with the requirements of the law. To the extent that the aged taxpayer must pay for such outside assistance, he is being subjected to an expenditure burden which he, being a low-income taxpayer, can ill afford -- an expenditure burden in the nature of a tax surcharge.²⁴

In 1971, a survey, conducted by the Internal Revenue Service to measure taxpayer experience with and attitudes toward the standard form 1040, revealed that approximately 80 percent of aged taxpayers sought outside assistance in preparing their federal tax returns -- a substantially greater percent than in the case of the non-aged. While certainly this 80 percent figure includes many who were assisted without charge by friends and relatives, it must also include substantial numbers who had to purchase their assistance. Moreover, in the case of an aged taxpayer who is forced to seek commercial assistance, that assistance is likely to be relatively more expensive than it otherwise would be, simply because his forms of income are more difficult to report and assess for tax purposes, and require the use of more numerous and more complicated forms and supporting schedules.

²⁴ While I.R.C. §212 allows a deduction for fees paid to professional consultants for the preparation of tax returns, this deduction is available only to the aged taxpayer who finds it more advantageous to "itemize" his deductions rather than use the standard deduction. Moreover, in terms of tax savings, the benefit of such a deduction, to an itemizing aged taxpayer is only worth the amount of the deduction times his tax rate. Thus, in the case of an aged taxpayer who was in the 21 percent tax bracket and who expended \$15 to have his return prepared, the tax benefit would be only \$3.15.

Having considered the aged taxpayer and the nature of the tax preparation problems confronting him, some informed individuals have concluded that he tends to overpay his taxes -- something which he, a lower-income taxpayer, can ill afford to do. A 1965 survey by the Internal Revenue Service of the accuracy with which recipients of federal civil service pensions and annuities were reporting these amounts on their federal income tax returns revealed that, in certain samplings, as many as 75 percent were reporting these amounts improperly. Moreover, two thirds of those reporting incorrectly overstated their taxable income and paid too high a tax.²⁵

With respect to the retirement income credit, it has been estimated that from one-third to two-fifths of those eligible to avail themselves of this benefit, either fail to claim it or compute it erroneously.²⁶ While these estimates with respect to the R.I.C. are not the result of a scientifically-conducted survey, nevertheless, both the House Committee on Ways and Means²⁷ and the Senate Committee on Finance²⁸ have endowed them with some credibility by declaring that the complexity of the present credit prevents it from providing the full measure of relief intended.

The April 15, 1970 hearings conducted by the Senate Special Committee on Aging on the subject of income tax overpayments by the elderly contained variously-supported assertions by a variety

²⁵Hearings on Income Tax Overpayments by the Elderly Before the Senate Special Committee on Aging, 91st Cong., 2d Sess., 29-30 (1970) (Statement of Edwin S. Cohen, Assistant Secretary of the Treasury for Tax Policy).

²⁶Id. at 2; see also Hearings on Future Directions in Social Security Before the Senate Special Committee on Aging, 93d Cong., 1st Sess., pt. 5, at 443, note 1 (1973).

²⁷H.R. Rept. No. 231, 92d Cong., 1st Sess., 238 (1971).

²⁸S. Rept. No. 1230, 92d Cong., 2nd Sess., 588 (1972).

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of witnesses that as many as 50 percent of the aged taxpayers overpay their taxes. Henry W. Block, President of H & R Block, said during the course of that hearing:

"Do our over-65 taxpayers overpay their income taxes? Of course they do. Statistics relating to the extent of those overpayments are much better known to the Treasury, but there can be no doubt that our current laws and reporting forms, as they deal with tax reporting by our elderly citizens, have resulted in confusing, improper reporting, and a widespread failure to take advantage of the tax-reducing devices available."²⁹

Two witnesses, Othie G. Burk, former Vice President of the National Association of Retired Civil Employees, and Ira C. Funston, Senate Special Committee on Aging staff member and organizer of the Tax Assistance by the Elderly for the Elderly program, joined in estimating that 50 percent of the aged overpay their taxes. Mr. Funston, in describing the first-year experience of his Tax Assistance program stated:

"(during the first year) we had four men who helped 75 people. Fully half of them were paying too much. I didn't find a single person that had underpaid his taxes, because we asked them all to bring in their returns for the previous year. I didn't find a single one that was underpaying, but they were overpaying their taxes."³⁰

Although Mr. Randolph W. Thrower, Commissioner of Internal Revenue in 1970, denied, during the course of those hearings, the existence of any evidence to indicate that 50 percent of the over-65 taxpayers were overpaying their taxes, he did admit, in attempting to justify the abolishment of the short form 1040A, that "a significant number of users of the short form were overpaying their

²⁹Hearings on Income Tax Overpayments by the Elderly Before the Senate Special Committee on Aging, 91st Cong., 2d Sess., 45 (1970).

³⁰Hearings on Income Tax Overpayments by the Elderly Before the Senate Special Committee on Aging, 91st Cong., 2d Sess. 9 (1970).

taxes because the short form did not allow many tax benefits such as itemized deductions, retirement income credit, sick pay exclusion, head of household status, surviving spouse status and so forth."³¹

On the basis of the 1965 I.R.S. pension and annuity survey, the statements of the Committees on Ways and Means and Finance with respect to the underutilization of the retirement income credit, the general complexity of the tax laws governing the sources of income which constitute the major components of the AGI of the aged taxpayer, the number, length and complexity of the various forms and supporting schedules which must be used by him to report his income and assess his tax liability, and his physical, mental and academic limitations, it is reasonable to conclude that the aged taxpayer, relative to the non-aged taxpayer, tends to report his taxes erroneously, fails to avail himself fully of tax preferences intended for him, and in many cases overpays his taxes. Since his income is relatively limited in comparison with the income of the non-aged taxpayer, every effort must be made by the Internal Revenue Service to assist this special group of taxpayers to comply with the law and to cease overcomplying

³¹Hearings on Income Tax Overpayments by the Elderly Before the Senate Special Committee on Aging, 91st Cong., 2d Sess. 23 (1970).

PART THREE

PROGRESS SINCE 1970

Since 1970, there has been some improvement in the situation of the aged with respect to the problems encountered in the preparation of federal income tax returns. First, the 1971 data of Table II (page 7) indicates that while the total number of tax returns filed has increased, the number of returns filed by persons aged 65 or over has decreased.³² These statistics reflect both economic changes occurring during taxable year 1971 as well as the effects of certain tax law changes introduced by the Tax Reform Act of 1969 and the Revenue Act of 1971. The Tax Reform Act of 1969, for example, contained provisions to phase in a substantially increased standard deduction and a low income allowance, which replaced the comparatively stingy minimum standard deduction. It also phased in substantially liberalized deductible personal exemptions. All of these provisions are now fully effective.

Not only did the Tax Reform Act of 1969 render many low-income individuals, including many of the aged, non-taxable, but it also contained other provisions pursuant to which many of these were excused from the burden of complying with tax return filing requirements in order to obtain a refund for withheld taxes. Now, under the certification procedure of I.R.C. §3402, an employee, by certifying to his employer that he had no federal income tax

³²At present time, a return need not be filed by an aged taxpayer who has less than \$2,800 of gross income for the taxable year. See I.R.C. §6012(a)(1)(B).

liability in the previous year and expects to be non-taxable during the current year, may avoid the withholding of any income taxes from his earnings and consequently avoid the filing of a return to claim a refund.

To the extent that the lowest income aged are, as a result of the 1969 Tax Reform Act and the 1971 Revenue Act, no longer subject to tax and no longer subject to filing requirements, the situation with respect to tax preparation has been improved. Indeed, even to the extent that, because of the more liberalized standard deduction, an aged taxpayer may avoid itemizing deductions and contending with Schedule A, the task of tax return preparation has been simplified.

In addition to the effects of those pieces of legislation, the Internal Revenue Service has, since 1970, either initiated, continued or improved five separate courses of action designed to provide assistance to the aged taxpayer. First, the standard form 1040 and certain supporting schedules were improved to take account of special needs and limitations of the aged. For example, additional deductible items, such as hearing aids, dentures and eyeglasses in the case of the medical expense deduction, are now listed on Schedule A to help assure full tax advantage. Aged taxpayers are allowed to elect on Schedule R to have the Internal Revenue Service compute their retirement income credit. Form 1040 now allows for a simplified method of reporting income from fully taxable pensions and annuities; consequently, many pension and

annuity recipients are not required to file separate schedule E. The instructions accompanying form 1040, are no longer printed on the back of the form but are contained in a separate packet.

Second, the Internal Revenue Service has continued to publish materials designed to assist the aged taxpayer in the preparation of his federal income tax return. These include "Tax Benefits for Older Americans", "Retirement Income Credit", and "Tax Information on Selling Your Home".

Demonstrating an awareness of the complexities involved in computing the taxable portion of an aged taxpayer's pension or annuity, the Internal Revenue Service, as a third initiative, has sought to develop and implement means by which the payors of pensions or annuities can more readily inform the payees of the taxable portion of their gross annual payment. Certainly the arrangements made to date between the I.R.S. and the Civil Service Commission, the largest payor of retirement annuities, constitute significant progress. Annual statements are now supplied to Civil Service annuitants showing the gross amount paid and the taxable portion thereof.

Fourth, the Internal Revenue Service has continued, improved or expanded its various programs of direct taxpayer assistance. A toll-free telephone service was established subsequent to 1970 to assist taxpayers with specific questions. Expanded use has been made of the electronic and printed media to inform aged

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taxpayers of tax benefits available to them.³³ The most prominent form of taxpayer assistance -- that provided by the I.R.S. corps of taxpayer representative service personnel who counsel taxpayers without charge either by telephone or in person at local I.R.S. offices -- has, of course, been continued.

The final, and perhaps most promising, course of action taken by Internal Revenue in recent years is the expansion of its efforts to provide taxpayer assistance training to aged volunteers who participate in the Tax Aide for the Elderly program administered by the Institute of Lifetime Learning of the National Retired Teachers Association and the American Association of Retired Persons -- a program initiated in 1968, largely through the efforts of Mr. Ira C. Funston. The working relationship between the I.R.S. training division (under the Voluntary Income Tax Assistance program) and the Tax-Aide program is on two levels -- local and national. A description of the Tax-Aide program is the best means of defining what the I.R.S. is doing to provide indirect tax counseling assistance to aged taxpayers, since the program provides the context for the I.R.S. involvement.

The Tax-Aide program is organized locally, generally by local NRTA and AARP chapters and units which select a local coordinator to plan, organize and supervise the operation of the program. The local coordinator, with the help of the NRTA and AARP chapter

³³For example, during the 1972 filing period, the I.R.S. produced a 30-second television spot announcement and a T.V. slide which were made available to more than 900 television stations around the country. The same was done with respect to radio.

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and unit presidents, recruits volunteer counselors -- either Association members or qualified non-members, determines the number of counselors necessary for the operation of the program, decides whether assistant coordinators are needed, arranges any cosponsorship with other senior citizen and community organizations, and maintains liaison with National Tax-Aide Coordinator at the Washington, D.C. Institute of Lifetime Learning. He also establishes with the nearest I.R.S. office the time and date for volunteer training sessions and notifies the National Tax-Aide coordinator thereof so that he may confirm all training with the I.R.S. chief of taxpayer training.

The local coordinator must also secure convenient and centrally-located training and counseling quarters for the Tax-Aide counseling. Rent-free space in churches, schools, senior centers, banks, shopping centers, resident homes for the elderly and libraries, is generally utilized.

While supervising the local program, the local coordinator must also arrange for local publicity so that aged taxpayers will be aware that this free service is available. His duties also include coordinating the schedule of the volunteer counselors to provide maximum service, preparing necessary correspondence, and submitting a final evaluation of the local program to the National Coordinator at the end of the tax season.

The local Tax-Aide coordinator is assisted with respect to his duties by the National Tax-Aide Coordinator in Washington.

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Program information, training assistance and liaison with the I.R.S. is provided as requested by the local coordinator. Other essentials such as a public relations guide, income tax information sheets, and detailed operating procedures are also made available through the National Headquarters.

Working directly with the aged taxpayer who desires tax-counseling assistance is the volunteer Tax-Aide counselor. His training is provided by the I.R.S. professional training staff. In order to be selected by the local coordinator, the volunteer counselor must have an interest in and an aptitude for volunteer tax work, the ability to communicate effectively and the willingness to counsel in confidence.

The I.R.S. training session acquaints the volunteer counselor with the main requirements of the aged taxpayer's returns. The training session classes are ordinarily limited to 15 to 20 persons and are ordinarily conducted over a period of from two to three days. In order to train Tax-Aide counselors in areas of the country where I.R.S. personnel are unavailable, Tax-Aide volunteer instructors are trained to perform the functions which would otherwise be performed by the local I.R.S. personnel. These tax-aide volunteer instructors complete the same course the I.R.S. gives its training officers.

Once the training of the local volunteer counselors is complete, a work schedule is developed for the purpose of conducting the counseling service. Most volunteer counselors contribute several

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hours a week to the counseling service during the tax-preparation season. During an appointment, the volunteer's role is restricted to explaining to the counsellee what tax forms are required, how to fill them out, what information should be included, and what deductions or special preferences are available to him. In more complex cases, the volunteer counselor performs a needed service by referring the Tax-Aide participant to the I.R.S. or to other professional tax counselors. Counselors who are so motivated, assist retirees with their state tax returns and even local tax problems. Indeed, many states are cooperating with local coordinators of the Tax-Aide program to provide special state tax training for volunteer counselors in conjunction with their I.R.S. training.

For the tax return preparation season following the close of taxable year 1972, the I.R.S. trained 2,587 elderly Tax-Aide counselors through the I.R.S. V.I.T.A. program. These volunteer counselors provided assistance and guidance for 107,312 individuals in 625 cities around the nation. For the current tax-return preparation period, approximately 3,500 counselors have been trained to provide counseling services in some 800 cities. By April 15th, it is anticipated that this cadre of counselors will have provided assistance to as many as 200,000 aged taxpayers.

PART FOURRECOMMENDED IMPROVEMENTS IN I.R.S. TAX ADMINISTRATION
WITH RESPECT TO THE AGED

The dependence of the federal income tax system on voluntary mass compliance implies necessarily the existence of a relatively simple and comprehensible means of complying. Heretofore, the record of compliance has been relatively good. However, since it is likely that simplicity with respect to the reporting of income and the assessment of income tax liability will continue to be sacrificed as the Congress attempts to legislate more equitable treatment of all taxpayers, this record of voluntary compliance is likely to deteriorate unless more steps are taken to assure the availability of competent counsel to assist in the preparation of federal income tax returns without charge. As return preparation and tax computation become less simple, the need for competent assistance without charge becomes more necessary.

It has been argued that with respect to the aged taxpayer, the willingness of the Internal Revenue Service to compute the retirement income credit of an eligible aged taxpayer who has made the initial entries on schedule R, is not enough. The I.R.S. should, in the opinion of these advocates, undertake completely the responsibility for preparing the tax return of the aged taxpayer and computing his tax liability. Such a course of action would require a substantial increase in I.R.S. personnel and administrative costs, and would constitute a substantial precedent inimical to the voluntary compliance nature of the federal income

tax system. Since other available avenues of assistance have not yet been completely perfected nor completely utilized, I.R.S. efforts at improved administration should be focused upon these first.

The Department of the Treasury should continue its efforts to develop means by which payors of pensions and annuities can more readily inform the payee of the taxable portion of the gross annual payment. Since the computing of the taxable portion of the income from a pension or annuity often requires the use of materials such as annuity life-expectancy tables not readily available to the average retiree, Internal Revenue Service should therefore increase its technical assistance to pension and annuity plans in order that these plans may in turn assist the aged taxpayer by computing the taxable portion of his annual payments. An increased number of I.R.S. technical staff personnel and increased budgetary allocation should be devoted specifically to the achievement of this recommendation. Moreover, the Department of the Treasury and the Internal Revenue Service should be required to report periodically to the Congress with respect to their progress.

During the course of the April 15, 1970 tax overpayment hearings before the Senate Special Committee on Aging, it was recommended that a "senior short form" be developed for use by the low and moderate income aged taxpayer who does not itemize his deductions. The combined impact of the 1969 Tax Reform Act and the 1971 Revenue Act, to the extent that these provisions made the itemization of deductions disadvantageous and therefore unnecessary

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for many aged taxpayers, may have facilitated the development of such a senior short form. Since a study of the feasibility of designing such a form was recommended by the Senate Special Committee on Aging following the conclusion of the 1970 hearings,³⁴ the Internal Revenue Service should make public whatever steps were taken subsequent to 1970 to implement this recommendation. Moreover, if the Internal Revenue Service did indeed undertake such a study but concluded that the development of such a form was non-feasible, the agency should review the matter to determine whether changing circumstances have now rendered it feasible.

Henry R. Block, President of H & R Block, described the senior short form during the 1970 hearings as follows:

"I was in complete accord with the Treasury when the old 1040A short form was abolished, because its ease of preparation encouraged millions of taxpayers to cheat themselves. But it was a generic "short form." I propose a special "short form" for the elderly because it will stop these people from cheating themselves.

"This special "senior 1040," designed for use only by taxpayers with incomes under a certain level, would basically omit all the sections of the current form which are causing the most problems to the elderly. The specifics can easily be determined by an analysis of 1968 and 1969 returns. Then, tax rates would be adjusted so that the taxpayers in this group are assessed approximately the same tax as if they had properly filed under today's more complicated set of rules.

"In this way, we could insure that all elderly taxpayers receive the benefits accorded them by retirement income credit -- and abolish schedule R at the same time. By the same token, as long as income was under a certain level, the elderly taxpayer would not have to confront those complicated pension and annuity schedules. His double exemption would be incorporated within his lower tax rates and thus eliminate yet another minor step in proper tax reporting."³⁵

³⁴S. Rept. No. 1464, 91st Cong. 2d Sess. 11 (1970).

³⁵Hearings on Income Tax Overpayments by the Elderly Before the Senate Special Committee on Aging, 91st Cong., 2d Sess. 47-48 (1970).

In conjunction with this recommendation for the development of a special senior 1040 form, excusing lower income aged taxpayers from the burden of having to file a declaration of estimated tax and preparing the form 1040ES, which he may never have encountered prior to retirement should also be considered. As the 1971 data with respect to the sources of aged taxpayer income indicates, the aged taxpayer often has modest income from rental property, dividends, interest, capital gain, pensions, and annuities with respect to which a declaration of estimated taxes must be filed.³⁶

The Internal Revenue Service should be encouraged to continue its publication of tax return preparation assistance materials and to make these readily available, without charge, to the aged taxpayer. Concomitantly, the Internal Revenue Service should increase its efforts to inform him via the electronic and printed media, of existing statutory filing requirements, of the special tax preferences intended for his benefit, and of the means of, or location for, obtaining free advice and counsel on his general or specific tax problems. An annual report should be submitted to the Congress disclosing the sums expended for these purposes and the numbers of persons aided thereby.

If implemented, the aforementioned recommendations would provide the aged taxpayer with a measurable degree of relief and would apprise the Congress on a continuing basis of the nature and extent of the efforts being taken to assist this minority. However, it

³⁶I.R.C. §6015(a)(2) requiring, as a general rule, that every individual make a declaration of his estimated tax for the taxable year if his gross income can reasonably be expected to include more than \$200 from sources other than wages.

is tax preparation assistance counseling that affords the greatest potential for the amelioration of tax preparation problems confronting the aged taxpayer. Since the potential of this specific form of aid to the aged taxpayer has been only partially realized, I.R.S. administrative efforts should be concentrated here.

Presently, two alternative means, which are not mutually exclusive, are available for providing tax preparation assistance counseling to the aged. First, there is that which the Internal Revenue Service provides directly through its taxpayer representative service personnel in the local I.R.S. offices. Second, there is that which is provided indirectly by volunteer counselors who are trained by the I.R.S. under its V.I.T.A. program and who are participants in privately-sponsored tax counseling programs such as Tax-Aide. For a variety of reasons, the latter approach would appear to offer the more effective means for counseling the aged.

As the experience of aged volunteers who have participated as Tax-Aide counselors indicates, the aged taxpayer prefers to discuss his tax problems with another knowledgeable aged person. This initial rapport is often essential to an appreciation of the dimensions of the aged taxpayer's particular problem, especially if the taxpayer is inarticulate. Since the counselor is a volunteer, the aged taxpayer tends to assume a predisposition on the part of the counselor to his point of view.

The aged taxpayer is often reluctant to deal directly with a non-aged I.R.S. representative because he feels that the I.R.S. agent will not be disposed to listen patiently and sympathetically to an ill-articulated problem and will be ^{not} objective in evaluating "his side" simply because of his agency status. Moreover, this reluctance, based on a fear of nonreceptivity to his point of view, may not be without justification. Consider for example the aged taxpayer who confers with an I.R.S. agent at the local I.R.S. office to determine whether certain payments he received during the course of the year should be treated as "sick pay" and excluded from gross income to the extent provided by law or treated as fully or partially taxable "retirement income."³⁷

It is unlikely that an I.R.S. agent is going to inform the aged taxpayer, who wishes to claim "sick pay payments" but who, under the I.R.S. interpretation, should treat them as "retirement income," of the probability of error with respect to the I.R.S. position. It is also unlikely that the agent is going to inform the aged taxpayer of the procedures available to him for contesting

³⁷Reg. §1.105-4(a)(3) limits the application of the sick pay exclusion of I.R.C. §105(d) to amounts attributable to periods during which the employee would be at work were it not for personal sickness. Under this regulation, an employee is not considered absent from work if he has reached retirement age. The I.R.S. has taken the position that an employee reaches retirement age when he reaches the earliest age specified in a pension or annuity plan at which he, had he not been disabled and had continued in his employment, would have had the right to retire without the consent of the employer. An increasing number of judicial decisions, however, have found this I.R.S. position erroneous. The overwhelming majority of the courts which have considered the issue have held that "retirement age" for purposes of I.R.C. section 105(d) is the mandatory age specified in a plan at which an employee must retire unless the actual practice of the employer or employees indicates otherwise. This is so even though the taxpayer may have reached the earliest age for retirement benefits.

the issue, such as the U.S. Tax Court's small claim procedure, or of his need to file claims for refunds before the running of the statute of limitations. Since the volunteer counselor participating in a program like Tax-Aide is not an I.R.S. agent and does not share the identity of interest that I.R.S. taxpayer representative service personnel share, he is likely to be less restricted in outlining procedures and remedies.

A variety of additional factors also tend to render the direct I.R.S. taxpayer assistance program inappropriate to the needs of the aged taxpayer. I.R.S. taxpayer representative service personnel are available to answer specific questions; the aged taxpayer, however, is less likely to be seeking answers to specific questions and more likely to be seeking general assistance in the preparation of his federal income tax return and supporting schedules -- the type of assistance more readily available from a volunteer program like Tax-Aide. The I.R.S. agent is less accessible than the volunteer Tax-Aide counselor who is located in places where the aged taxpayer is concentrated. Given the diminishing mobility of the aged taxpayer, this outreach aspect of the Tax-Aide program is highly important. Since Tax-Aide counseling is available on an appointment basis, the aged taxpayer is not confronted with the substantial impediment of waiting on a "first-come-first-serve" basis for assistance in a local I.R.S. office. With volunteer counselors in the Tax-Aide program increasingly able to provide tax preparation assistance counseling not only with respect to federal income tax matters but also with respect to state and local

tax matters, the aged taxpayer is relieved of the burden of having to visit each of the federal, state and local tax or revenue offices.

Not only are volunteer tax counseling programs like Tax-Aide better suited to the needs of the aged taxpayer and should therefore be strongly supported by the Internal Revenue Service, but they are relatively inexpensive. Since such tax counseling programs utilize primarily the services of older volunteers, the cost of providing assistance to the aged taxpayer is far less than would be the cost of augmenting substantially the I.R.S. taxpayer representative service program to perform the same function. In addition, it may actually be easier for a program like Tax-Aide to obtain the necessary numbers of volunteer counselors than for the I.R.S. to increase seasonally its staff of taxpayer representatives simply because there is a substantial reservoir of experienced and talented retirees who not only have ability but also have time to devote to good causes such as assisting their contemporary with his tax problems.

The minimal cost involved in providing counseling assistance directed at specific taxpayer groups is evident from the statistics available with respect to the 1973 Tax Aide program. With a total budget of \$52,904, the Tax-Aide program was able to recruit and, with I.R.S. assistance, train 2,587 volunteer counselors who served in 625 cities around the nation. It is estimated that this corps of counselors assisted 107,312 aged taxpayers with respect to federal, state, county and municipal tax matters. On a per capita

basis, this amounts to a cost of approximately \$.50 per person aided.

In order to facilitate the expansion of volunteer counseling programs such as Tax-Aide and in order to realize the full quality potential of counseling provided through such programs, the Internal Revenue Service could undertake a number of administrative improvements. It should develop specific and specialized training material for those volunteers who work with the aged taxpayers. At the present time, V.I.T.A. course books and lecture outlines for classes are geared towards volunteers who will be giving assistance to persons of all ages. It would be beneficial to develop training booklets concerned with the most common types of problems confronting the aged taxpayer.

If such training manuals are to be developed, the Internal Revenue Service should consult with volunteers who have served as counselors for suggestions as to simplification of instructions. Tax-Aide program headquarters personnel at the Institute of Lifetime Learning in Washington, D.C. could be of assistance by acting as a clearing-house for the communication of ideas and suggestions from volunteer counselors to the Internal Revenue Service. However, such a clearing-house function would imply a close and continuing liaison.

All training materials should be available by mid-October. Heretofore, training manuals have generally been made available between mid-November and mid-December at the earliest. Accelerating the availability date would allow five to six weeks for training

of volunteer counselors before the Christmas season. Training would not, therefore, have to be deferred until January as is often the case at the present time.

The I.R.S. agent in charge of V.I.T.A./Tax-Aide at the District level should be committed to the program on a full-time basis. At the present time, this agent often has responsibilities for other types of training or for other administrative matters. Moreover, a full-time commitment of I.R.S. personnel to the V.I.T.A. program would effect a desirable improvement in the liaison between the I.R.S. and volunteer counselors by assuring that information available to Tax-Aide and I.R.S. Washington personnel would be communicated and acted upon by I.R.S. field staff, thereby precluding the delays in organizing volunteer counseling programs that have been encountered in the past. Finally, a full-time commitment of I.R.S. personnel is also indicated if the volunteer programs are to transcend their seasonal nature and become year-round service programs. While there will always be a seasonal tax counseling bulge from January through April 15th, a transformation of the volunteer programs into year-round service programs would facilitate tax counselor training and preparation, the reporting and careful evaluation of program data and advance planning. Moreover, a year-round program would make available to the aged taxpayer the services of volunteer counselors capable of providing assistance with respect to problems not necessarily connected to the traditional January to April filing season.

As a final means of facilitating the growth and quality improvement of volunteer tax counseling programs, the Department of the Treasury and the Internal Revenue Service should support S. 2868, the "Older Americans Tax Counseling Assistance Act" and seek necessary appropriations. This legislation would permit the Internal Revenue Service to strengthen its training and technical assistance program -- a condition necessarily precedent to the recruiting of additional numbers of volunteer counselors, all of whom must be trained. This legislation would also permit the Internal Revenue Service to reimburse the volunteer tax consultants with respect to their out-of-pocket expenses incurred during training and service. Finally, the bill would authorize Internal Revenue Service to conduct special alerts to help assure that the aged taxpayer is fully aware of important tax relief measures intended for his benefit.

The enactment of S. 2868 or similar legislation would accelerate the expansion of tax preparation counseling programs for the aged to their optimum service potential by eliminating existing financial restraints. At the present time, the size of the Tax-Aide program is subject to the budgetary limitations of the sponsoring organizations, the National Retired Teachers Association and the American Association of Retired Persons. Not only ^{would} the infusion of federal funds provide the additional numbers of I.R.S. training personnel who would have to be provided if more volunteer tax counselors are to be trained, but this infusion would also, by reimbursing for meals and travel, open up the tax counseling programs to many more

S. 2868, 93d Cong., 2d Sess. (1974).

potential volunteers, specifically those reitrees who, although highly motivated, must consider such incidental cost consequences as expenses for meals and travel. Finally, the availability of federal funds would free some of the private funds of the sponsoring organizations for certain program quality improvements -- as, for example, employment of a cadre of experts to assist the ordinary volunteer counselors.

PART FIVE

CONCLUSIONS

The aged taxpayer category is a minority taxpayer group of approximately 8.7 million persons, more than 50 percent of whom are lower-income. While the aged taxpayer has less dollars of income than the non-aged, he is far more likely to find each dollar of income he does have more difficult and expensive to report and assess for tax purposes. Since the complexity of the tax laws which govern the forms of income relatively unique to the aged taxpayer and which limit the availability of tax preferences intended for his benefit, substantially impedes his ability to comply voluntarily with the requirements of the law and since relief by means of tax simplification remains unlikely, compensating steps must be taken and tax counseling assistance provided without charge to facilitate the aged taxpayer's voluntary compliance and restrain his tendency toward overcompliance.

Specifically, the Department of the Treasury should persevere in its efforts to develop means by which payors of pensions and annuities can more readily inform the payee of the taxable portion of the gross annual payment. The Internal Revenue Service should determine or redetermine the feasibility of developing a "senior short form" designed specifically for the aged taxpayer reporting relatively standard types of income and claiming relatively standard tax benefits. Elimination, with respect to the aged taxpayer, of the requirements for filing a declaration of estimated tax should

be considered. The publication of tax return preparation materials designed for the aged taxpayer and the distribution of these materials without charge must be continued. Efforts to inform the aged taxpayer via the electronic and printed media of existing statutory filing requirements, of special tax preferences intended for his benefit, and of the means of, and the location for obtaining free advice and counsel on general or specific tax problems should be augmented. Finally, the expansion of tax preparation assistance counseling programs designed specifically for and aimed specifically at the aged taxpayer category should be stimulated.

That commercial tax-preparers such as H & R Block and non-commercial volunteer tax preparation assistance programs such as Tax-Aide have flourished, especially during the last four years, constitutes substantial evidence of the failure of the I.R.S. taxpayer representative service program to accommodate satisfactorily the unique needs of the aged taxpayer. Since the aged taxpayer is a low-income person, the most significant contribution which the Internal Revenue Service could render in ameliorating his tax preparation problems would be to facilitate the development and expansion of volunteer tax counseling programs. This could be done by expanding the number of I.R.S. training offices available for counseling volunteers, producing training materials designed specifically for the volunteer who is to deal with the aged taxpayer, making such training materials available well in advance of the tax return preparation season, committing the I.R.S. field

agents in charge of V.I.T.A./Tax-Aide to that program on a full-time basis, maintaining continuous and close liaison with program coordinators and volunteer counselors, supporting the enactment of legislation similar to the "Older Americans Tax Counseling Assistance Act," and seeking adequate appropriations to facilitate the implementation of these measures.



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